EXHIBIT 3

Page 1

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 1

 2     UNITED STATES DISTRICT COURT

       SOUTHERN DISTRICT OF NEW YORK

 3     ---------------------------- X

       NATIONAL ASSOCIATION FOR

 4     THE ADVANCEMENT OF

       COLORED PEOPLE,

 5     SPRING VALLEY BRANCH, et al.,

 6              Plaintiffs,

 7           vs.                    No.

                                7:17-cv-08943

 8

       EAST RAMAPO CENTRAL

 9     SCHOOL DISTRICT, et al.,

10              Defendants.

       ---------------------------- X

11

12                    February 6, 2018

13                    10:07 a.m.

14

15

16          Deposition of STEVEN P.

17     COLE, Ph.D., held at the offices of

18     Morgan, Lewis & Bockius LLP, 101 Park

19     Avenue, New York, New York, pursuant to

20     Notice, before Theresa Tramondo, AOS, CLR,

21     a Notary Public of the State of New York.

22

23     Reported by:

24     THERESA TRAMONDO, AOS, CLR

25     JOB NO. PA2808166
```

Page 2

1
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14   STEVEN P. COLE, Ph.D.:
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1
2   APPEARANCE OF COUNSEL (CONT'D):
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4   FOR DEFENDANT EAST RAMAPO CENTRAL SCHOOL
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25

Page 4

1
2   STIPULATIONS
3
4
5   IT IS HEREBY STIPULATED AND AGREED,
6   by and among counsel for the respective
7   parties hereto, that the filing,
8   sealing and certification of the within
9   deposition shall be and the same are
10   hereby waived;
11   IT IS FURTHER STIPULATED AND AGREED
12   that all objections, except as to form
13   of the question, shall be reserved to
14   the time of the trial;
15   IT IS FURTHER STIPULATED AND AGREED
16   that the within deposition may be signed
17   before any Notary Public with the same
18   force and effect as if signed and sworn to
19   before the Court.
20
21
22
23
24
25

Page 5

1
2   BY THE COURT REPORTER:
3   Q.   Please state your full name for
4   the record.
5   A.   Steven Parker Cole, Ph.D.
6   Q.   What is your address?
7   A.   Business address, 1315 Baptist
8   Church Road, Yorktown Heights, New York
9   10598 and 721 E. Ponce de Leon Avenue,
10   Decatur, Georgia 30030.
11   S T E V E N P C O L E, P h D,
12   called as a witness, having been duly
13   sworn by a Notary Public, was examined and
14   testified as follows:
15   EXAMINATION BY
16   MR. LEVINE:
17   Q.   Good morning. We are on the
18   record. My name is Randall Levine. I am an
19   attorney. I represent the defendant in this
20   case, East Ramapo Central School District.
21   Would you please state your full
22   name for the record.
23   A.   Steven Parker Cole.
24   Q.   Dr. Cole, is that the right form
25   of address?

2 (Pages 2 - 5)

Page 6

1   Cole
2   A.   It is.
3   Q.   Dr. Cole, you have been deposed
4   before, right?
5   A.   I have.
6   Q.   Well, then we will just refresh
7   on the ground rules.
8   If you have any questions,
9   please ask. Today your answers will be
10 given under oath, subject to penalties of
11 perjury as if you were testifying in a
12 courtroom. Do you understand that?
13   A.   I do.
14   Q.   If you don't understand any of
15 my questions today, either in whole or in
16 part, please just tell me, and I will
17 rephrase the question. If you don't ask me
18 to rephrase the question, then I will assume
19 you understood the question. Do you
20 understand?
21   A.   I do.
22   Q.   There may be times today when in
23 the middle of a question counsel for one of
24 the parties may object. That is not an
25 instruction to you not to answer the

Page 7

1   Cole
2   question. Do you understand?
3   A.   I do.
4   Q.   Are you represented by counsel
5   today?
6   A.   I have counsel here who
7   represent the school district. I -- I
8   actually don't understand the question.
9   Q.   Let's clarify it. You have been
10 retained to serve as an expert in this case,
11 correct?
12   A.   Correct.
13   Q.   You have been retained by a law
14 firm to provide an opinion in this case,
15 correct?
16   A.   Correct.
17   Q.   Who retained you?
18   A.   I was retained by Latham &
19 Watkins and New York Civil Liberties Union.
20   Q.   Are the attorneys from the NYCLU
21 here today with you to serve in the capacity
22 as counsel for the plaintiffs?
23   A.   Correct.
24   Q.   Very good.
25   If at any point during the

Page 8

1   Cole
2   deposition today you need to take a break,
3   that is perfectly fine. I would just ask
4   that you wait until I finish a question and
5   provide an answer to a question and then we
6   can take a break. Do you understand?
7   A.   I do.
8   Q.   Did you drink any alcohol prior
9   to coming here this morning?
10   A.   No.
11   Q.   Did you take any medications
12 prior to coming here this morning?
13   A.   Just throat lozenges.
14   Q.   Are you currently being treated
15 for any illness that would prevent you from
16 answering questions fully and truthfully
17 today?
18   A.   No.
19   Q.   Is there any other reason you
20 can think of why you might not be able to
21 give accurate and truthful answers to my
22 questions?
23   A.   I don't.
24   Q.   Very good.
25   Before we move on to the next

Page 9

1   Cole
2   piece, do you have any questions for me
3   about the deposition?
4   A.   I don't.
5   MR. LEVINE: I'm going to mark a
6   document as Cole Exhibit 1.
7   (Cole Exhibit 1, Curriculum
8   vitae of Steven P. Cole, Ph.D., dated
9   December 2017, marked for
10   identification, as of this date.)
11   Q.   I note it's marked on the first
12 page "Exhibit 2." That's not the deposition
13 exhibit number.
14   Take a moment to look at the
15 document and familiarize yourself with it.
16   The document marked as Cole
17 Exhibit 1, do you recognize that document?
18   A.   It has Cole Exhibit 2 on the
19 tab.
20   Q.   Do you recognize the document
21 that we've marked as Cole Exhibit 1?
22   A.   I do.
23   Q.   Is this your CV?
24   A.   It is.
25   Q.   To the best of your knowledge,

3 (Pages 6 - 9)

Page 10

```
1              Cole
2    is this CV fully up to date?
3         A.   It's dated December 2017.  I
4    would like to update it.  There is a change
5    since December.
6         Q.   All right.  There is something
7    you would like to add to your CV; is that
8    correct?
9         A.   Not to add to it.  Just change a
10   date.
11        Q.   There is at least one change you
12   would like to make to the CV?
13        A.   It's the only one I'm aware of,
14   yes.
15        Q.   What's the change?
16        A.   On page 26 under "Publications
17   and Papers," this article on depression was
18   accepted by the Journal of Affective
19   Disorders.  It went into press in December.
20   It's now available online.  It has been
21   published, and it will be out on paper in a
22   few months.
23        Q.   Any other changes to this CV
24   that you are aware of as you sit here today?
25        A.   Not that I'm aware of.
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Page 11

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1              Cole
2         Q.   Turning to the very first page
3    of the document, which is labeled at the top
4    "Page 2 of 38," under "Experience" you have
5    listed as the first entry, "2016 to Present,
6    a role as primary investigator, Northeast
7    Sustainable Agriculture Research and
8    Education Grant, University of Vermont,
9    Residual Doramectin in alpaca manure
10   compost."
11             What is that role that you're
12   serving in in that entry?
13        A.   I'm the primary investigator.
14        Q.   What is residual Doramectin in
15   alpaca manure?
16        A.   Alpacas east of the Mississippi
17   River are prone to a parasite, a meningeal
18   worm, a brain worm, and in order to prevent
19   severe neurological issues, they're injected
20   monthly with a medication Doramectin.
21        Q.   What do you do as the primary
22   investigator?
23        A.   I -- as a primary investigator,
24   I applied -- I was the lead author on a
25   grant proposal.  I designed the study.  I
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Page 12

```
1              Cole
2    actually participate in taking samples, so
3    data collection, I do data analysis, report
4    writing, and communication with coauthors.
5         Q.   Are you an expert in alpaca
6    manure?
7         A.   I actually am.
8         Q.   Is that a veterinary expertise?
9         A.   No.  I actually live on a farm
10   and have alpacas, so I'm very experienced
11   with manure, and have been concerned about
12   alpaca and llama farmers using composted
13   manure for gardens and farms knowing that
14   the animals are medicated.
15             So the purpose of the study is
16   to document how long it takes for the drug
17   to leave the animal and then once it's
18   composted to study how long or to study the
19   degradation rates of the drug in the
20   composted manure.
21        Q.   That project you're working on
22   is continuing through to the present,
23   correct?
24        A.   Correct.
25        Q.   Let's move down to the next
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Page 13

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1              Cole
2    entry "2012 to Present, adjunct professor,
3    Department of Theater and Dance, Emory
4    University, Atlanta, Georgia."  Does that
5    entry mean that you're a dance teacher?
6         A.   No.
7         Q.   So what do you do as an adjunct
8    professor of the Department of Theater and
9    Dance?
10        A.   I provide research consultations
11   to the department.
12        Q.   Of what nature?
13        A.   With respect to designing
14   experiments, designing research, developing
15   measurement tools, statistical analysis and
16   support in writing up the results for
17   publications.
18        Q.   How does that work relate to
19   theater and dance?  What are you studying?
20        A.   An example of studying in that
21   program would be analyzing the effect of
22   dancing or teaching dance in front of
23   mirrors, what effect does that have on the
24   body image of female ballet dancers.
25        Q.   That began in 2012 continuing
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4 (Pages 10 - 13)

Page 14

Cole

1
2 through to the present, correct; is it one
3 study or multiple studies?
4   MR. GROSSMAN: Objection.
5   Q.   The first question is: 2012
6 continuing to the present, correct?
7   A.   Correct.
8   Q.   Have you conducted a single
9 study with the Theater and Dance Department
10 at Emory?
11   A.   No. It has been more than one
12 study.
13   Q.   Let's move on to the next one,
14 "1993 to Present, adjunct professor,
15 Department of Psychology, Emory University,
16 Atlanta, Georgia." What is your primary
17 field of study as a psychology professor?
18   A.   There are two primary areas;
19 research, design and statistics, and the
20 second area would be perception and memory.
21   Q.   Let's start with the first.
22 What in particular -- the research, design
23 and statistics, how does that relate to the
24 discipline of psychology?
25   A.   There is an area of psychology

Page 16

Cole

1
2 formal classes in statistics. I do invited
3 presentations about statistical analysis.
4   Q.   Have you taught formal classes
5 in statistics?
6   A.   I have.
7   Q.   When was the last time you
8 taught formal classes in statistics?
9   A.   That would have been 1995.
10   Q.   Where did you teach statistics
11 classes in 1995?
12   A.   The Atlanta University Center.
13   Q.   What is that?
14   A.   That is a consortium of
15 historically Black colleges and universities
16 in Atlanta like Morehouse.
17   Q.   That class, was it an
18 undergraduate class?
19   A.   Yes.
20   Q.   For how many semesters did you
21 teach that class ballpark?
22   A.   Approximately ten.
23   Q.   Have you ever published a peer
24 review article on statistical analysis?
25   A.   I have published peer review

Page 15

Cole

1
2 that focuses on designing research,
3 designing measurement tools, and in
4 statistical analysis of the data that's an
5 area of psychology that I studied and have
6 expertise and provide consultation to the
7 department on.
8   Q.   Do have formal training in
9 statistical analysis?
10   A.   I do.
11   Q.   Can you tell me the nature of
12 your formal training with statistical
13 analysis?
14   A.   It began as an undergraduate at
15 the University of Virginia, continued in my
16 graduate studies at Columbia and expanded
17 when I was a graduate student at Emory.
18   Q.   Do you teach any statistics
19 classes?
20   A.   I need you to get more specific
21 about your question. You used the words,
22 "do you"; are you talking currently?
23   Q.   Yes. Currently do you teach any
24 statistics classes?
25   A.   At this point I'm not teaching

Page 17

Cole

1
2 articles that deal with statistical
3 analysis, yes.
4   Q.   Just so I understand, are you
5 saying that you have published peer review
6 articles in which you used statistical
7 analysis?
8   A.   Certainly used, and in some
9 articles go beyond just using.
10   Q.   What do you mean by that?
11   A.   I mean qualifying the analyses,
12 critiquing other analyses and moving the
13 field forward with the analyses.
14   Q.   Have you been retained to serve
15 as an expert witness in a Voting Rights Act
16 case before now?
17   A.   Yes.
18   Q.   Have you been retained to serve
19 as an expert witness in a Voting Rights Act
20 case involving Section 2 of the Voting
21 Rights Act?
22   A.   Yes.
23   Q.   When was the last time you
24 served as an expert witness in a Section 2
25 case?

5 (Pages 14 - 17)

Page 18

1   Cole
2   A.   You'll have to clarify what you
3 mean by "expert witness."
4   Q.   I mean by "expert witness" that
5 you were retained for the purpose of
6 testifying about your professional opinion
7 in court.
8   A.   Okay, could you repeat the prior
9 question then?
10   Q.   Sure.
11   When was the last time you were
12 retained to serve as an expert witness in a
13 Section 2 case?
14   A.   Three years ago.
15   Q.   What was the name of that case?
16   A.   Voketz versus City of Decatur.
17   Q.   What were you retained to opine
18 on in that case?
19   A.   Racially polarized voting.
20   Q.   Did you testify in that case?
21   A.   No.
22   Q.   Did you draft a report for that
23 case?
24   A.   I did.
25   Q.   Do you know if that report was

Page 19

1   Cole
2 filed in court?
3   A.   I believe it was.
4   Q.   Were you deposed in that case?
5   A.   I was not.
6   Q.   Do you know whether that case
7 was resolved?
8   MR. GROSSMAN: Objection.
9   Q.   Do you know whether that case is
10 ongoing?
11   A.   It's ongoing.
12   Q.   Do you recall -- for that case
13 if I call it the "Decatur case," will you
14 know what I mean?
15   A.   We can agree on that, sure.
16   Q.   In the Decatur case, were you
17 retained to perform statistical analysis?
18   A.   Yes.
19   Q.   What statistical analysis
20 techniques did you perform?
21   A.   Homogenous precinct analysis,
22 correlational analysis, bivariate ecological
23 regression and ecological inference.
24   Q.   Have you served as an expert
25 witness in any other Section 2 cases?

Page 20

1   Cole
2   A.   I have.
3   Q.   Before the Decatur case, what is
4 the most recent Section 2 case that you
5 served as an expert witness in?
6   A.   I'm going to ask you to clarify
7 what you mean by "case"?
8   Q.   A litigation in state or federal
9 court.
10   A.   Are you assuming that a case has
11 been filed by that question?
12   Q.   Yes. By that question I am
13 asking actual filed litigation for which you
14 were retained to serve as an expert witness.
15   A.   That would be Large versus
16 Fremont County.
17   Q.   When were you retained to serve
18 as an expert in that case?
19   A.   Approximately ten years ago.
20   Q.   Did you testify?
21   A.   Yes.
22   Q.   Did you testify in court in that
23 case?
24   A.   I did.
25   Q.   Is that case ongoing?

Page 21

1   Cole
2   A.   No.
3   Q.   Do you know how that case was
4 resolved?
5   A.   I know how it was resolved at
6 the federal district level.
7   Q.   How was that case resolved at
8 the federal district level?
9   A.   The Court decided in favor of
10 the plaintiff.
11   Q.   Were you retained by the
12 plaintiffs in the Fremont case?
13   A.   I was.
14   Q.   How about the Decatur case, were
15 you retained by the plaintiffs?
16   A.   No.
17   Q.   Who were you retained by in the
18 Decatur case?
19   A.   The City of Decatur.
20   Q.   Is the City of Decatur the
21 defendant in the Decatur case?
22   A.   I believe so.
23   Q.   Turning back to the Decatur
24 case, what was your opinion that you offered
25 in the Decatur case?

6 (Pages 18 - 21)

Page 22
1   Cole
2   MR. GROSSMAN: Objection.
3   Q.   If you understand, you can
4   answer.
5   A.   Can you get more specific with
6   your question?
7   Q.   Yes.
8   Did you opine in the Decatur
9   case, did you opine that elections were
10   racially polarized?
11   A.   I did.
12   Q.   In the Fremont case, did you
13   opine that elections were racially
14   polarized?
15   A.   I did.
16   Q.   Ballpark, how many Section 2
17   cases have you worked on as an expert
18   witness?
19   A.   Approximately 30.
20   Q.   In each of those cases, did you
21   opine on whether elections are racially
22   polarized?
23   A.   I believe so.
24   Q.   Have you ever concluded in your
25   role as an expert witness that elections

Page 23
1   Cole
2   were not racially polarized?
3   A.   Yes.
4   Q.   In what case was that?
5   A.   I should have asked you to
6   clarify the prior question. You didn't say
7   "case." You asked if I ever had opined --
8   could you ask the question again?
9   Q.   Sure.
10   In all of the cases for which
11   you have served as an expert witness, have
12   you ever opined that elections were not
13   racially polarized?
14   A.   Assuming that you mean a case
15   that has actually been filed?
16   Q.   Yes.
17   A.   Okay. In those cases I've
18   always testified that voting was in general
19   racially polarized.
20   Q.   That's about 30 cases, right?
21   A.   We can count them up in the CV,
22   but that's an approximation.
23   Q.   Sometimes you serve as an expert
24   in connection with cases that haven't been
25   filed; is that right?

Page 24
1   Cole
2   A.   That's right.
3   Q.   Explain that. What do you mean
4   by that?
5   A.   I might be retained as a
6   consultant to examine some jurisdiction to
7   assess whether voting is racially polarized
8   there, and in some of those situations, I
9   might find that racially polarized voting
10   was not present in general.
11   Q.   Have you ever determined that
12   there was not racially polarized voting in
13   that context as a consultant?
14   A.   Yes.
15   Q.   How many times?
16   A.   This is going to have to be a
17   rough guess.
18   Q.   Okay.
19   About how many times?
20   A.   You know, I actually -- this is
21   really a rough guess. So I'd say 10 to 15
22   times. 10 to 15 times perhaps.
23   Q.   Do you recall any specific
24   instance?
25   A.   I don't.

Page 25
1   Cole
2   Q.   Do you recall when the last time
3   you were retained as a consultant and found
4   that there was not racially polarized
5   voting?
6   A.   More than 15 years ago.
7   Q.   20 years ago?
8   A.   Sure.
9   Q.   Again, ballpark figure, how many
10   times have you served as a consultant in
11   Section 2 cases where no litigation has
12   actually been filed?
13   A.   Approximately 20 times.
14   Q.   So is it accurate to say that
15   your best recollection is that maybe 10 or
16   15 of those 20 times you concluded that
17   there was not racially polarized voting?
18   A.   I would say about half, about
19   half the time.
20   Q.   But you can't recall any
21   specific instance where that occurred?
22   A.   I can't.
23   Q.   Can you recall any specific
24   instance when you acted as a consultant and
25   did find racially polarized voting?

7 (Pages 22 - 25)

Page 26

1   Cole
2   A.   Do you want to expand that
3 question? The way it's phrased, it's pretty
4 broad.
5   Q.   Of the 20 or so times in which
6 you have served as a consultant, do you
7 recall any of the specific instances when
8 you opined that there was racially polarized
9 voting in the jurisdiction?
10   A.   I can't remember a specific
11 instance.
12   Q.   Does your CV list the retentions
13 as a consultant in unfiled cases?
14   A.   It will list the organizations
15 that retained me.
16   Q.   Could you show me one?
17   A.   Sure. On page 8, half the way
18 down, Florida Rural Legal Services.
19   Q.   Do you recall, when you were
20 retained by Florida Rural Legal Services,
21 you opined that there was racially polarized
22 voting in the jurisdiction you were asked to
23 analyze?
24   A.   Could you repeat the question?
25   Q.   What did you conclude for

Page 27

1   Cole
2 Florida Rural Legal Services?
3   A.   I don't recall specifics. There
4 were a number of projects there. I don't
5 remember the specifics.
6   Q.   Do you recall what they asked
7 you to opine on?
8   A.   Racially polarized voting.
9   Q.   Do you recall what you opined?
10   A.   I don't.
11   Q.   Okay. Let's switch gears a bit
12 and bring ourselves up to the present.
13   When were you retained to serve
14 as an expert witness for purposes of this
15 case?
16   MR. GROSSMAN: Objection.
17   A.   February of 2017.
18   Q.   What were you retained to do in
19 February of 2017?
20   A.   To explore racially polarized
21 voting in East Ramapo Central School
22 District.
23   Q.   What do you mean by "explore"?
24   A.   Do some analyses.
25   Q.   Were you provided data to

Page 28

1   Cole
2 analyze in February of 2017?
3   A.   Some data I was provided and
4 some I found on my own.
5   Q.   Did you begin your analysis in
6 February 2017?
7   A.   It may have taken a while before
8 I actually began doing analyses.
9   Q.   Did you start work in February
10 2017?
11   A.   Yes.
12   Q.   You bill by the hour for your
13 work on this case, correct?
14   A.   Correct.
15   Q.   At $150 an hour; is that right?
16   A.   Yes.
17   Q.   Do you record your time entries
18 when you work on this case?
19   A.   I do.
20   Q.   Have you recorded your time
21 since February 2017?
22   A.   Yes.
23   Q.   Do you know how many hours so
24 far you have worked on the case?
25   A.   Yes.

Page 29

1   Cole
2   Q.   How many hours have you worked
3 on the case?
4   A.   Approximately 140.
5   Q.   Do you identify the tasks that
6 you are performing in your time entries?
7   A.   Yes.
8   Q.   Do you know how many hours you
9 spent working on drafting your report?
10   A.   Yes.
11   Q.   How many hours?
12   A.   I don't recall the specific
13 number. I can provide an estimate.
14   Q.   Ballpark? Estimates are your
15 trade.
16   A.   Approximately 25.
17   MR. LEVINE: Let's go ahead and
18   mark another exhibit to take a look
19   at. Cole Exhibit 2.
20   (Cole Exhibit 2, Preliminary
21   Expert Report of Steven P.
22   Cole, Ph.D., marked for
23   identification, as of this date.)
24   Q.   You have before you a document
25 that we have marked as Cole Exhibit 2.

8 (Pages 26 - 29)

Page 30

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 1              Cole
 2  Please take a moment to take a look at it
 3  and familiarize yourself with the document.
 4  There appears to be highlights in this
 5  document?
 6          MR. LEVINE:  Would anybody
 7      object that we continue the deposition
 8      working with this one, but we will go
 9      and print some clean ones to use as
10      the exhibit and we could sub them in?
11          MR. GROSSMAN:  That's fine.
12          MR. LEVINE:  Could you go print
13      me some clean copies of this exhibit?
14      Q.   We are still on the record.
15  Let's work with this exhibit.
16          Do you recognize the document
17  that we've marked as Cole Exhibit 2?
18      A.   Understanding that the
19  underlinings, the highlighting is not mine,
20  yes.
21      Q.   Is this document the -- this is
22  the Preliminary Expert Report of Steven P.
23  Cole, Ph.D., correct?
24      A.   Correct.
25      Q.   Did you prepare this report?
```

Page 31

```
 1              Cole
 2      A.   I did.
 3      Q.   Did you draft the report
 4  yourself?
 5      A.   I did.
 6      Q.   Did anybody else work with you
 7  on this report?
 8      A.   Yes.
 9      Q.   Who else?
10      A.   Counsel.
11      Q.   Anybody else besides counsel?
12      A.   No.
13      Q.   No research assistants?
14      A.   No.
15      Q.   The report is titled
16  "Preliminary Expert Report."  What does it
17  mean to be a preliminary expert?
18      A.   Keeping open the possibility
19  that there might be a subsequent report.
20      Q.   Does the title "Preliminary
21  Expert Report" indicate that your opinions
22  reflected in the report are incomplete?
23      A.   No.
24      Q.   So are these your final opinions
25  on the questions you were asked in this
```

Page 32

```
 1              Cole
 2  case?
 3      A.   I'm not sure if I'm going to be
 4  asked to do anything further.  Given the --
 5  if I'm asked to do other work, other
 6  analyses, they might reflect on these
 7  results.
 8      Q.   Is there anything else that you
 9  would want to do with this report -- let me
10  see if I can rephrase that.
11          Is there any additional data
12  that you think you would need to make this a
13  final report?
14      A.   Not at this time.
15      Q.   Is there any other analytical
16  technique that you would want to do to make
17  this a final report?
18      A.   Not at this time.
19      Q.   Was there any data that you
20  asked for that were not provided?
21      A.   I don't think so.
22      Q.   What data were you provided --
23  well, yes.
24          What data were you provided to
25  analyze for this report?
```

Page 33

```
 1              Cole
 2      A.   The data that I was provided --
 3          MR. GROSSMAN:  Objection.
 4      Q.   I will rephrase it.
 5          Were you provided data to
 6  analyze to form your opinions in this
 7  report?
 8      A.   Yes.
 9      Q.   Who provided you data?
10      A.   I received data from the school
11  district's website, from counsel, from
12  plaintiffs' expert, Bill Cooper, and from
13  Steve White.
14      Q.   Who is Steve White?
15      A.   Steve White is a former
16  candidate for the school board in East
17  Ramapo.
18      Q.   How do you know Steve White?
19      A.   Through counsel.
20      Q.   What data did Steve White
21  provide you?
22      A.   Voter registration data.
23      Q.   Where did Steve White get voter
24  registration data from?
25      A.   I'm not sure.
```

9 (Pages 30 - 33)

Page 34

```
 1                Cole
 2     Q.   How do you know the data he
 3  provided you is accurate?
 4     A.   There were multiple sources of
 5  the data and I compared them.
 6     Q.   What do you mean by that?
 7     A.   I mean the voter totals from the
 8  voter registration data, there were
 9  consistent results across data.
10     Q.   When you say that Steve White
11  provided you voter registration data, what
12  do you mean by "voter registration data"?
13     A.   These are lists of voters in
14  Rockland County.
15     Q.   Lists of the names of voters?
16     A.   Voters of -- names, addresses --
17  names and addresses.
18     Q.   What do you use that data for?
19     A.   Those data were used to
20  establish what election districts are
21  comprised in the different polling places in
22  the school district.
23     Q.   How?
24     A.   What do you mean, how?
25     Q.   How do you use that data to
```

Page 35

```
 1                Cole
 2  perform that analysis?
 3     A.   To do my analyses I need to know
 4  the racial makeup of the different polling
 5  places.  The polling places, their
 6  boundaries are unique.  They're not
 7  coterminous with other political boundaries.
 8     Q.   How do you use the data that
 9  Steve White provided you to determine the
10  racial makeup of polling places?
11       (Record read.)
12     A.   Okay, so the registration data
13  with names, addresses and election
14  districts, they were provided to Demographer
15  Bill Cooper.
16     Q.   What did Bill Cooper do with
17  them?
18     A.   Using mapping technology, he was
19  able to -- with the street addresses and
20  election district designations, he was able
21  to estimate the racial makeup of the ten
22  polling places in the school district.
23       MR. LEVINE:  Let's take a quick
24     timeout to replace the exhibit.
25       (Recess taken.)
```

Page 36

```
 1                Cole
 2     Q.   Picking back up, did you do
 3  anything to independently verify the data
 4  provided to you by Steve White?
 5     A.   Yes.
 6     Q.   What did you do?
 7     A.   I aggregated the data by
 8  election district and polling place.
 9     Q.   How does that verify the data?
10     A.   We're using the addresses in the
11  data in the election districts to see if
12  they match up to the polling places, and so
13  what I did was to aggregate the data by
14  election district and polling place to see
15  if they match up.
16     Q.   Is it fair to say that you
17  didn't rely on any data you received from
18  Steve White unless you independently
19  verified it?
20       MR. GROSSMAN:  Objection.
21     Q.   Do you understand?  I can
22  rephrase.
23     A.   Could you rephrase?
24     Q.   Sure.
25       Did you independently verify all
```

Page 37

```
 1                Cole
 2  of the data that you received from Steve
 3  White?
 4     A.   I don't know what you mean by
 5  "verify all of the data."
 6     Q.   The aggregation that you just
 7  described in answer to my previous
 8  question --
 9     A.   Yes.
10     Q.   -- did you do that for all of
11  the data that Steve White provided to you?
12     A.   Yes.
13     Q.   In your opinion, did that verify
14  the accuracy of the data?
15     A.   It did.
16     Q.   Did you have any other
17  communications with Steve White?
18       MR. GROSSMAN:  Objection.  To
19     the extent it reveals communications
20     with counsel, don't answer, but to the
21     extent it discusses facts and data
22     that were provided to you, you can
23     answer.
24     A.   The only communication that I
25  had with him surrounded these kinds of data.
```

10 (Pages 34 - 37)

Page 38

1   Cole
2   Q.   Is Steve White one of the
3   plaintiffs in this case?
4   A.   I don't know.
5   Q.   Did you have communications with
6   Steve White and plaintiffs' counsel at the
7   same time?
8   A.   I did.
9   Q.   Did you have communications with
10 Steve White one to one?
11   A.   No.
12   Q.   About how many times did you
13 have communications with Steve White?
14   A.   Approximately half a dozen
15 times.
16   Q.   Did Steve White provide you any
17 other information besides the registration
18 data?
19   A.   I don't think so.
20   Q.   What did Steve White tell you
21 during those communications?
22   MR. GROSSMAN: Objection. To
23   the extent it reveals communications
24   with counsel, don't answer. To the
25   extent it discusses facts and data or

Page 39

1   Cole
2   the assumptions you were provided, you
3   can answer.
4   MR. LEVINE: Are you asserting a
5   privilege over communications with
6   Steve White?
7   MR. GROSSMAN: Yes.
8   MR. LEVINE: Do you represent
9   Steve White?
10   MR. GROSSMAN: Steve White is
11   consultant to plaintiffs. He has been
12   retained.
13   MR. LEVINE: Okay.
14   Q.   I'll ask the question again.
15   What else did Steve White tell
16 you during those communications?
17   MR. GROSSMAN: Same objection.
18   A.   The communications centered
19 around the election district polling place
20 issue.
21   Q.   Anything else?
22   A.   Not that I recall.
23   Q.   Were you provided election
24 results data to analyze for this report?
25   A.   I was.

Page 40

1   Cole
2   Q.   Do you know where the election
3   results came from?
4   A.   I assume you mean the election
5   results provided by counsel?
6   Q.   Yes.
7   A.   Yes.
8   Q.   What was the source of the
9   election results data?
10   A.   I believe they were websites.
11   Q.   To the best of your knowledge,
12 were you provided the official election
13 results?
14   A.   Yes.
15   Q.   For this report you analyzed the
16 election results from school board elections
17 in the East Ramapo Central School District,
18 right?
19   A.   I did.
20   Q.   How many elections did you
21 analyze?
22   MR. GROSSMAN: Objection.
23   A.   What do you mean by "analyze"?
24   Q.   In your report that we've marked
25 as Cole Exhibit 2, you have opinions related

Page 41

1   Cole
2   to four years' worth of East Ramapo school
3   board elections, correct?
4   MR. GROSSMAN: Objection.
5   A.   It's actually -- it's not four
6   years.
7   Q.   You have opinions related to
8   school board elections in 2013, right?
9   A.   Yes.
10   Q.   2014, right?
11   A.   Yes.
12   Q.   2015?
13   A.   Yes.
14   Q.   2016?
15   A.   Yes.
16   Q.   And 2017?
17   A.   Correct.
18   Q.   Did you analyze any other years?
19   A.   I analyzed the 2012 U.S.
20 presidential contest.
21   Q.   Other than that, did you analyze
22 any other school board elections in East
23 Ramapo?
24   A.   No.
25   Q.   So you didn't analyze the 2012

11 (Pages 38 - 41)

Page 42

1   Cole
2   East Ramapo school board election?
3   A.   No.
4   Q.   You didn't analyze the 2011
5   school board election in East Ramapo?
6   A.   No.
7   Q.   You didn't analyze the 2010
8   school board election in East Ramapo?
9   A.   No.
10   Q.   Why not?
11   A.   I felt that five years of
12   elections, school board elections, was
13   sufficient.
14   Q.   The 2014 election, those
15   contests were uncontested, correct?
16   A.   Correct.
17   Q.   Did you analyze the uncontested
18   elections in 2014?
19   A.   I did not perform racially
20   polarized voting analyses on those contests.
21   Q.   Other than the 2012 presidential
22   election, did you analyze election data from
23   any other positions other than school board
24   elections?
25   A.   No.

Page 43

1   Cole
2   Q.   So you didn't analyze election
3   data from town board elections for towns in
4   Rockland County?
5   A.   I did not analyze them.
6   Q.   Were you provided data from town
7   board elections?
8   A.   If I'm not mistaken, it's town
9   council elections, but, yes, I was provided
10   some town data.
11   Q.   Who provided you that data?
12   A.   Counsel.
13   Q.   Did you analyze that data?
14   A.   I did not.
15   Q.   Why not?
16   A.   I felt that those contests only
17   included a small segment of the district --
18   school district voters.
19   Q.   Other than the town level data,
20   were you provided any other election data?
21   A.   There may have been some other
22   small jurisdiction data. I just don't
23   remember specifically what they were, but
24   the reason I didn't analyze them -- I just
25   don't remember -- was it that their

Page 44

1   Cole
2   jurisdictions were just too small.
3   Q.   Turning back to the East Ramapo
4   school board, do you know whether any Black
5   candidates were elected to the school board
6   before 2013?
7   A.   Yes.
8   Q.   Were there?
9   A.   I'm going to rephrase that. I
10   don't remember.
11   Q.   The question was: Do you know
12   whether any Black candidates were elected to
13   the board of education prior to 2013?
14   A.   I don't recall.
15   Q.   Do you know whether any Latino
16   candidates were elected to the board of
17   education before 2013?
18   A.   Again, I'm not sure.
19   Q.   Did you do anything to
20   investigate whether there may have been
21   racial polarization in elections in East
22   Ramapo prior to 2013?
23   A.   I have not.
24   Q.   So it's fair to say that you're
25   not opining to anything that occurred in

Page 45

1   Cole
2   East Ramapo prior to the 2013 elections; is
3   that right?
4   A.   Clarify, you're talking about
5   school board back to 2013, because there was
6   a 2012 --
7   Q.   Yes.
8   A.   Okay, so I am opining about --
9   how about you rephrasing the question?
10   Q.   Yes.
11   Did you do anything to
12   investigate whether there may have been
13   racial polarization in East Ramapo school
14   board elections prior to 2013?
15   A.   I did not.
16   Q.   Specifically in reference to
17   your report, take a look at paragraph 1 on
18   the first page of the report. At the top of
19   the page it says, "Page 2 of 46."
20   You formed opinions on three
21   questions, right?
22   MR. GROSSMAN: Objection.
23   A.   There were three main questions
24   that I focused on.
25   Q.   Let's talk about those three

12 (Pages 42 - 45)

Page 46

Cole

```
 1              Cole
 2   main questions first.
 3          The first question was whether
 4   Black voters in the district are politically
 5   cohesive, correct?
 6       A.   Correct.
 7       Q.   Your opinion on that question is
 8   that they are politically cohesive, correct?
 9       A.   Correct.
10       Q.   Is that still your opinion as
11   you sit here today?
12       A.   It is.
13       Q.   The second question was whether
14   Black and Latino voters are cohesive, right?
15       A.   Yes.
16       Q.   And you also answered that
17   question in the affirmative, correct?
18       A.   Correct.
19       Q.   Is that still your opinion as
20   you sit here today?
21       A.   Yes, it is.
22       Q.   And the third question you were
23   asked to opine on is whether candidates
24   preferred by Black or a coalition of Black
25   and Latino voters in the district are
```

Page 47

```
 1              Cole
 2   usually defeated by candidates supported by
 3   the White majority voting as a bloc,
 4   correct?
 5       A.   Correct.
 6       Q.   And you also answered that
 7   question in the affirmative?
 8       A.   Yes.
 9       Q.   Is that still your opinion as
10   you sit here today?
11       A.   It is.
12       Q.   What other questions were you
13   asked to consider?
14          MR. GROSSMAN:  Objection.
15          MR. LEVINE:  What is the basis
16       for that objection?
17          MR. GROSSMAN:  It's vague.  It's
18       unclear, what other questions and in
19       what context.
20       Q.   Your answer to one of my prior
21   questions was, to summarize, that those
22   three questions I just asked you about were
23   primary questions.  Did you mean to suggest
24   that there were other questions you were
25   asked to analyze?
```

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```
 1              Cole
 2       A.   In terms of the questions I was
 3   asked to analyze, those were the questions.
 4       Q.   Did you analyze any other
 5   questions besides those three?
 6       A.   In conducting my research, I
 7   explored the issue of slating in the school
 8   district, slating of candidates.  I explored
 9   the racial makeup of the schools.
10       Q.   Anything else?
11       A.   Those were the main other areas
12   of inquiry.
13       Q.   What do you mean by "explored"?
14       A.   Did research on.
15       Q.   What do you mean by "slating"?
16       A.   I mean in the school district,
17   are there groups of candidates running
18   together as a slate.
19       Q.   Did you form an opinion on the
20   issue of the slating of candidates in East
21   Ramapo school board elections?
22       A.   I did.
23       Q.   What was that opinion?
24       A.   That slates of candidates were
25   supported.  There was one slate of
```

Page 49

```
 1              Cole
 2   candidates that were typically supported by
 3   groups that were supportive of public
 4   schools, another group of candidates
 5   typically were supported by interests that
 6   were supportive of private schools.
 7       Q.   What do you mean "supportive of
 8   public schools"?
 9       A.   Campaign for, held meetings for,
10   wrote letters in newspapers for, those kinds
11   of things.
12       Q.   Maybe I'm not clear.  Public
13   schools are an institution.  What do you
14   mean "supportive of public schools"?
15       A.   Typically the groups who support
16   public schools or support a slate of
17   candidates, supporters of public schools are
18   looking to improve the quality of the public
19   schools.
20          (Record read.)
21       A.   Yes.
22       Q.   In paragraph 6 of your report
23   you state that "sources show that minority
24   preferred candidates generally run with the
25   support of organizations advocating for
```

13 (Pages 46 - 49)

Page 50

1   Cole
2   increased investment in the district's
3   public schools." Is that what you're
4   referring to when you testified about
5   organizations supportive of public schools?
6   A.   That kind of thing, yes.
7   Q.   What organizations are you
8   referring to?
9   A.   I think some of the groups, one
10   was called Power of Ten, one was Support
11   East Ramapo.
12   Q.   What do you know about Power of
13   Ten?
14   A.   I don't know much about them.
15   Q.   Is it a membership organization?
16   A.   What do you mean by "a
17   membership organization"?
18   Q.   Is it an organization with
19   members?
20   A.   I believe so.
21   Q.   Do you know how many members?
22   A.   I don't.
23   Q.   Any other organizations?
24   A.   Those were the two main ones.
25   Q.   Turning back to paragraph 6, the

Page 51

1   Cole
2   remainder of the sentence that we are
3   looking at says, "and White preferred
4   candidates generally run with the support of
5   organizations and leaders favoring lower
6   taxes while maintaining support for private
7   schools." Is that what you were referring
8   to when you testified earlier when you used
9   the phrase "supportive of private schools"?
10   A.   Yes.
11   Q.   What organizations are you
12   referring to there?
13   A.   One organization is called
14   SERTA, S-E-R-T-A.
15   Q.   What do you know about SERTA?
16   A.   I believe their premise is to
17   try to keep taxes low in the district.
18   Q.   Is that an organization with
19   members?
20   A.   I believe so.
21   Q.   Do you know how many members it
22   has?
23   A.   I don't.
24   Q.   You used the phrase
25   "organizations" and "leaders." What do you

Page 52

1   Cole
2   mean by "leaders"?
3   A.   One example was, in one of the
4   contests a letter was published, signed by
5   approximately 50 private school
6   administrators.
7   Q.   So are private school
8   administrators leaders favoring lower taxes?
9   A.   I believe they are.
10   Q.   Anybody else?
11   A.   That's it for now.
12   Q.   What do you know about private
13   schools in East Ramapo?
14   A.   That's a pretty broad question.
15   Q.   Do you know anything about the
16   private schools in East Ramapo?
17   MR. GROSSMAN: Objection.
18   A.   Yes.
19   Q.   What do you know about the
20   private schools in East Ramapo?
21   MR. GROSSMAN: Objection.
22   A.   I know there are approximately
23   70, seven-zero.
24   Q.   How do you know that?
25   A.   I reviewed demographic data from

Page 53

1   Cole
2   the New York State Education Department.
3   Q.   Do you recall what data
4   specifically you reviewed?
5   A.   Data on their website about
6   school enrollment by race.
7   Q.   Do you know whether any of the
8   private schools in East Ramapo are religious
9   schools?
10   A.   Yes.
11   Q.   About how many of them are
12   religious schools?
13   A.   From viewing the website, I saw
14   that most of them are religious schools.
15   Q.   What religion?
16   A.   Most of them were related to the
17   Jewish religion.
18   Q.   Have you heard the term
19   "yeshiva" before?
20   A.   Yes.
21   Q.   Do you know whether most of
22   these private schools in East Ramapo are
23   yeshivas?
24   A.   Many of the names were yeshivas,
25   yes.

14 (Pages 50 - 53)

Page 54

Cole

1
2   Q.   What is a yeshiva in your
3   understanding?
4   A.   A yeshiva is a school devoted to
5   educating Jewish teachings, Hebrew.
6   Q.   Moving one paragraph up in your
7   report stating your conclusion, the final
8   sentence of paragraph 5 you state, "The most
9   recent six contested elections exhibit an
10   extreme degree of racial polarization that I
11   have rarely seen in over 25 years of
12   analyzing voting behavior."
13   My first question is: When you
14   say "the most recent six contested
15   elections," are you referring to the school
16   board elections in 2017 and 2016?
17   A.   Yes.
18   Q.   What do you mean by "an extreme
19   degree of racial polarization"?
20   A.   "Racially polarized voting"
21   basically defined is when races vote
22   differently. You could have in a contest
23   where we're looking at, let's say, Whites
24   and Blacks, you might have a situation where
25   55 percent of the Whites vote for one

Page 55

Cole

1
2   candidate and 55 percent, in this example,
3   of the Blacks vote for the other candidates.
4   I'd consider that polarized.
5   Q.   Just following from your
6   example, which is very helpful, would you
7   conclude that there is racially polarized
8   voting if there was 51 percent White voters
9   voting for one candidate and 49 percent of
10   White voters voting for another candidate
11   and 49 percent of Black voters voting for
12   candidate A and 51 percent of Black voters
13   voting for candidate B? I could probably do
14   that better.
15   The same split that you just
16   described, but take it down four more
17   points, so it's 51 percent and 49 percent;
18   would that do the trick?
19   A.   That would be a relatively weak
20   example of racially polarized voting, and
21   usually we just look at just more than one
22   contest, but we're just using this as an
23   example.
24   What we're looking at really --
25   what we're looking at here is cohesion, how

Page 56

Cole

1
2   much support a particular racial group gives
3   for a candidate. Cohesion is a continuum,
4   is a contest where a particular racial group
5   gives 51 percent of their support for a
6   candidate. That's a rather weak example of
7   cohesion. We move up to 60 percent, if it's
8   a 60/40 split in political circles, that
9   might be considered a rather strong split.
10   70/30 is even greater.
11   Q.   So I understand your testimony,
12   so what you just described relates to
13   cohesion. Separating that from racial
14   polarization, an election is racially
15   polarized when 51 percent of White voters
16   vote for one candidate and 51 percent of
17   Black voters vote for another candidate; is
18   that right?
19   A.   That's right.
20   MR. GROSSMAN: Is this a good
21   stopping point? We've gone about 90
22   minutes.
23   Q.   Do you want to take a break?
24   A.   Sure.
25   MR. LEVINE: Let's take a break.

Page 57

Cole

1
2   (Recess taken.)
3   MR. LEVINE: Could you read back
4   the last question and answer to pick
5   up where we were?
6   (Record read.)
7   Q.   Back on the record after the
8   break.
9   Would an election not be
10   racially polarized if a majority of the
11   Black voters and a majority of White voters
12   vote for the same candidate?
13   A.   That particular contest, that
14   particular example would be an example where
15   it was not polarized.
16   Q.   Does it matter if 80 percent of
17   White voters vote for a candidate and 51
18   percent of Black voters vote for the same
19   candidate or is that not racially polarized?
20   MR. GROSSMAN: Objection.
21   A.   Could you rephrase that?
22   Q.   All right.
23   Playing with the same example --
24   A.   Yes.
25   Q.   -- does it matter if the degrees

15 (Pages 54 - 57)

Page 58

1   Cole
2   of support are different such that, for an
3   example, if 80 percent of White voters and
4   51 percent of Black voters support the same
5   candidate, would that election not be
6   racially polarized?
7   A.   The example you gave me, the
8   majority of the both racial groups are
9   supporting the same candidate, one is at 80
10 percent and one is at 51 percent. In
11 general, I would say that particular example
12 is not supportive of racially polarized
13 voting.
14   Q.   Is that the only scenario in
15 which you would not find racially polarized
16 voting, meaning where majorities of Black
17 voters and majorities of White voters both
18 support the same candidate?
19   A.   I just want to be clear about
20 this. We're talking about an election, a
21 contest, as an example. That's one
22 scenario. If you are talking about multiple
23 pieces of information, multiple assessments
24 of racially polarized voting, a richer set
25 of results, then we've got a different kind

Page 59

1   Cole
2   of question.
3   But if you're giving me one
4   example to discuss at this moment, let's
5   keep it to that as an example of.
6   So would you repeat your
7   question then?
8   Q.   Yes.
9   One hypothetical election, one
10 contest, a majority of White voters and a
11 majority of Black voters vote for the same
12 candidate, that is not racially polarized
13 voting, is that the only scenario in which
14 there will not be racially polarized voting?
15   A.   I don't know what you mean by
16 that.
17   Q.   Well, I'm asking for your
18 working definition of "racially polarized
19 voting" so that I can understand what you
20 would need to see to conclude that an
21 election was not racially polarized.
22   So if a racially polarized
23 election is one where a majority of White
24 voters and a majority of Black voters vote
25 for different candidates, does that mean the

Page 60

1   Cole
2   only way an election cannot be racially
3   polarized is one where a majority of White
4   voters and a majority of Black voters vote
5   for the same candidate?
6   A.   A simplistic way of looking at
7   it, given your example, both racial groups
8   are supporting the same candidate in your
9   example, right?
10   Q.   Yes.
11   A.   That is a situation -- that's a
12 situation which would not be racially
13 polarized.
14   And so the second part of your
15 question, I just don't understand.
16   Q.   Does it matter why voters vote
17 the way they do?
18   A.   I'm not -- my job is not to give
19 reasons or explain why. It's just I'm
20 looking at results.
21   Q.   So your working definition of
22 racial polarization does not consider the
23 reasons why voters vote the way they vote?
24   A.   If I'm aware of a context that
25 might provide the Court with background as

Page 61

1   Cole
2   to why the results are what they are, I
3   might report it, but it's not my job to
4   figure out the reasons why.
5   Q.   In a single election, for
6   example, does the context change your
7   analysis of whether there is racially
8   polarized voting?
9   A.   Given that there is ample data
10 and all the quantitative aspects are
11 appropriate, I would be -- the contextual
12 information would not change the way I do
13 the analysis.
14   Q.   Let's take a look at a specific
15 example. Turn in your report to the
16 document marked Cole Exhibit 2 to where on
17 the bottom of the page it says "Page 40."
18 At the top of the page is says "Table 2
19 (cont.), Member Elections 2013-2017, Summary
20 of EI and HPA Racial Bloc Voting Analysis."
21   When you say "EI," that refers
22 to ecological inference, correct?
23   A.   Correct.
24   Q.   This reporter or this table in
25 the report summarizes the analysis that you

16 (Pages 58 - 61)

Page 62

1   Cole
2   performed using the ecological inference
3   technique, correct?
4   A.   Correct. That's one of the
5   analyses reported in this table.
6   Q.   In the middle of the page
7   beneath May 21, 2013, do you see that table?
8   A.   I do.
9   Q.   The first column has a title
10   that says "Percent Latino Voters Voting for
11   Candidate, EI." Does that mean that this
12   column reports your estimates using the
13   ecological inference technique?
14   A.   Yes.
15   Q.   Moving over one column where the
16   column is entitled "Percent NH Black Voters
17   Voting for Candidate, EI," does that column
18   report the results of your ecological
19   inference analysis for non-Hispanic Black
20   voters; is that what that means?
21   A.   Yes.
22   Q.   And the next column over,
23   "Percent NH White Voting for White Voters
24   Voting for Candidate" and it says "EI," does
25   that column report the results of your

Page 63

1   Cole
2   ecological inference analysis for the
3   percentage of non-Hispanic White voters
4   voting for a candidate in 2013?
5   A.   Yes.
6   Q.   The next column over is
7   different. It says, "Percentage NH White
8   Voters Voting for Candidate, HPA." What
9   does "HPA" stand for?
10   A.   That stands for homogenous
11   precinct analysis.
12   Q.   Does that column report the
13   result of your analysis using the homogenous
14   precinct analysis for the percentage of
15   non-Hispanic White voters voting for a
16   particular candidate in 2013?
17   A.   Yes.
18   Q.   The final column says "Votes."
19   What is that reporting?
20   A.   Those are the vote totals that
21   each candidate received in the contest.
22   Q.   Do the numbers in the "Votes"
23   column come from the official vote tallies?
24   A.   Yes.
25   Q.   Looking at "Percentage

Page 64

1   Cole
2   non-Hispanic Black voters voting for
3   candidate, EI" for the "Seat of Moses
4   Friedman" in 2013, do you see where I'm
5   looking?
6   A.   I do.
7   Q.   You're reporting that 73.9
8   percent of non-Hispanic Black voters voted
9   for a candidate named MaraLuz Corado; is
10   that correct?
11   A.   Correct.
12   Q.   You're reporting your conclusion
13   that 29.3 percent of non-Hispanic Black
14   voters voted for a candidate named Margaret
15   Tuck, correct?
16   MR. GROSSMAN: Objection.
17   A.   You're going to have to repeat
18   that.
19   Q.   In this column are you reporting
20   your conclusion that 29.3 percent of
21   non-Hispanic Black voters voted for
22   candidate Margaret Tuck?
23   MR. GROSSMAN: Objection.
24   A.   29.3 is an estimate from the
25   ecological inference program of what percent

Page 65

1   Cole
2   of non-Hispanic Black voters voted for
3   Margaret Tuck.
4   Q.   How did you generate that
5   estimate?
6   A.   These estimates are generated
7   with Gary King's program Ecological
8   Inference.
9   Q.   Are you an expert in Professor
10   King's Ecological Inference technique?
11   A.   What do you mean by "expert"?
12   Q.   Well, that's an interesting
13   question, I suppose. Why don't we take a
14   few steps back before we get back to that
15   question.
16   What is Professor King's
17   ecological inference technique?
18   A.   The methodology was developed in
19   the late 1990s. It combines several
20   statistical techniques; the method of bounds
21   and a maximum likelihood, statistical
22   methodology to provide -- can be used to
23   generate estimates of racially polarized
24   voting.
25   Q.   Do you hold yourself out to be

17 (Pages 62 - 65)

Page 66

1   Cole
2 an expert in using Professor King's
3 Ecological Inference technique?
4   A.   Again, in this context what do
5 you mean by "expert"?
6   Q.   I guess the relevant question
7 is: What do you mean by expert because this
8 is an expert report?
9   Do you consider yourself to be
10 an expert in the use of Professor King's
11 Ecological Inference technique?
12   A.   I'm an expert in the use of the
13 technique.
14   Q.   How many times have you
15 performed an ecological inference analysis?
16   A.   That's an awfully broad
17 question. Are you asking how many times I
18 ran it for this case?
19   Q.   No.
20   How about we phrase it this way:
21 In how many cases have you performed an
22 ecological inference analysis?
23   A.   Again, are you referring to
24 cases that have actually been filed?
25   Q.   Yes.

Page 67

1   Cole
2   A.   Approximately a dozen.
3   Q.   Do you use a software program to
4 perform the King's Ecological Inference
5 technique?
6   A.   I do.
7   Q.   Does the software program have a
8 name?
9   A.   Yes.
10   Q.   What is it called?
11   A.   EzI.
12   Q.   Do you know what "EzI" stands
13 for?
14   MR. GROSSMAN: I think it's the
15   word "easy" followed by the letter I;
16   is that correct?
17   THE WITNESS: No.
18   MR. GROSSMAN: It's EzI.
19   (Record read.)
20   A.   I actually don't.
21   Q.   What operating system do you use
22 to run EzI?
23   A.   It is a DOS-based system.
24   Q.   Do you know what version of the
25 software you have?

Page 68

1   Cole
2   A.   I don't recall.
3   Q.   Is EzI open-source software?
4   A.   I believe so.
5   Q.   Have you downloaded Mods for the
6 software, M-O-D-S, modifications?
7   A.   I don't believe so.
8   Q.   Do you know who produces the
9 software?
10   A.   I know who authored the
11 software.
12   Q.   Who authored the software?
13   A.   Gary King.
14   Q.   Did you license it from Gary
15 King?
16   A.   No.
17   Q.   When did you obtain the program
18 from -- well, when did you obtain the
19 program?
20   A.   The program that I used for
21 these analyses, I believe I obtained it
22 about five years ago.
23   Q.   Have you updated that software
24 since then?
25   A.   I have not.

Page 69

1   Cole
2   Q.   What information do you need to
3 input into the software to generate an EI
4 estimate?
5   A.   You need total votes cast, you
6 need proportion of the votes cast for a
7 particular candidate, you need proportion of
8 the racial percentage and you need turnout.
9   Q.   Did you have all of that
10 information when you ran these EI estimates?
11   A.   Yes.
12   Q.   What information did you input
13 for turnout?
14   A.   Total number of votes as a
15 function of total CVAP.
16   Q.   What do you mean "as a function
17 of"?
18   A.   Related to the voting age
19 population.
20   Q.   By "CVAP" you mean citizen
21 voting age population?
22   A.   That's right.
23   Q.   Do you mean to say that turnout
24 is the number of votes cast as subtracted
25 from the total of CVAP?

18 (Pages 66 - 69)

Page 70

1   Cole
2   A.   Divided by.
3   Q.   Divided by, okay.
4   Does that tell you information
5 about the turnout by racial category?
6   A.   What do you mean "does that tell
7 you"?
8   Q.   Does that data tell you any
9 information about the turnout by racial
10 category?
11   A.   Those data by itself do not.
12   Q.   Are you able to estimate turnout
13 by racial category?
14   A.   Yes.
15   Q.   How do you do that?
16   A.   That's part of what the
17 ecological inference program can do.
18   Q.   Did you generate estimates of
19 the turnout by racial category for the 2013
20 races?
21   A.   That's part of the output.
22   Q.   Did you report that in your
23 report?
24   A.   I did not.
25   Q.   Why not?

Page 71

1   Cole
2   A.   That's not a main focus of my
3 inquiry.
4   Q.   Do you have that information?
5   A.   I captured that information,
6 yes.
7   Q.   How did you capture it?
8   A.   It's saved in a file.
9   Q.   On your computer?
10   A.   Yes.
11   Q.   Was there any other data that
12 you required, but were not provided to
13 perform the ecological inference analysis
14 for 2013?
15   MR. GROSSMAN: Objection.
16   A.   Could you repeat that?
17   Q.   Yes.
18   Was there any data that you
19 needed that you weren't provided to perform
20 the ecological inference analysis for 2013?
21   A.   I don't know quite how to answer
22 the question the way you phrased it. Some
23 of the data that I used, I wasn't provided.
24 I obtain on my own.
25   Q.   You had all the data you needed

Page 72

1   Cole
2 to perform the ecological inference
3 analysis, correct?
4   A.   Correct.
5   Q.   In paragraph 26 of your report
6 you say that one of the advantages of
7 ecological inference is that "measures of
8 the statistical accuracy of the estimates
9 can be generated." Do you see that?
10   A.   What paragraph are you reading
11 from?
12   Q.   26.
13   A.   It's page 26. What paragraph?
14   Q.   Sorry.
15   A.   Or are you talking about
16 paragraph 26?
17   Q.   I'm talking about paragraph 26.
18   A.   I'm sorry.
19   Q.   Page 11, paragraph 26, the
20 second to last sentence of the paragraph, I
21 can read it, it says, "Additional advantages
22 of EI are that estimates of RBV can be
23 generated for each precinct or polling place
24 and that measures of the statistical
25 accuracy of the estimates can be generated."

Page 73

1   Cole
2 Are you with me?
3   A.   I am.
4   Q.   What do you mean by "measures of
5 the statistical accuracy of the estimates"?
6   A.   What Gary King's EI program can
7 do is generate a measure called -- it's an
8 error term, it's a standard error, that is
9 an index of the statistical accuracy of the
10 estimate.
11   Q.   Did you measure the statistical
12 accuracy of the estimates for the 2013
13 races?
14   A.   Yes. They're part of the
15 output.
16   Q.   Did you report the measures of
17 the statistical accuracy of the estimates in
18 2013?
19   A.   They're not reported here.
20   Q.   Why not?
21   A.   It's not a requirement of the
22 report like this to report the standard
23 errors.
24   Q.   Do you know what the standard
25 errors for the estimates for the 2013 races

19 (Pages 70 - 73)

Page 74

1   Cole
2   are?
3   A.   I can report to you a range of
4   the errors. I don't know the specific ones
5   per estimate off the top of my head.
6   Q.   All right.
7   Do you have a document that does
8   set out the standard errors for the
9   estimates for the 2013 election?
10   A.   It's part of the output.
11   Q.   So you have that retained in a
12 file someplace?
13   A.   I do.
14   Q.   What would be the range of the
15 standard errors that you referred to for May
16 21, 2013 elections?
17   A.   If I recall correctly, I believe
18 they were less than one up to maybe
19 approximately five, but that's -- that's my
20 recollection.
21   Q.   Would that recollection of the
22 range of standard errors apply to all races
23 that you analyzed for 2013?
24   A.   I think that's the range for the
25 18 estimates. Again, that's just an

Page 75

1   Cole
2   estimate of the range. I don't recall the
3   exact numbers.
4   Q.   Are you familiar with the phrase
5   "point estimate"; if I say that, do you know
6   what that means?
7   A.   I do.
8   Q.   What is a point estimate?
9   A.   A point estimate is an estimate
10 generated by typically a sample from a
11 larger set of data. It's an estimate of
12 what the true value of the measure of
13 interest is.
14   Q.   So for the 2013 election where
15 you report 73.9 percent of non-Hispanic
16 Black voters voting for candidate MaraLuz
17 Corado, is 73.9 a point estimate?
18   A.   It is.
19   Q.   Are all of the figures in these
20 columns point estimates?
21   A.   In the EI columns, yes.
22   Q.   Are you familiar with the
23 concept of a confidence interval?
24   A.   I am.
25   Q.   What is a confidence interval?

Page 76

1   Cole
2   A.   A confidence interval is a bound
3   that is put on your point estimate that
4   gives you a level of confidence in your
5   result.
6   Q.   How is a confidence interval
7   determined?
8   A.   Confidence interval is
9   determined by using some measure of error.
10 You use that to create a bound to the point
11 estimate.
12   Q.   Do you use the standard error
13 that you testified about earlier to generate
14 confidence intervals?
15   A.   You could.
16   Q.   Could you do something else?
17   A.   There are other measures of
18 error that you could use.
19   Q.   Did you calculate confidence
20 intervals for your estimates for the 2013
21 races?
22   A.   I did not.
23   Q.   And you don't report any
24 confidence intervals for any of the
25 estimates in your report, right?

Page 77

1   Cole
2   A.   That's correct.
3   Q.   Why did you not calculate
4   confidence intervals?
5   A.   They're not required as part of
6   a report of this nature.
7   Q.   How confident are you in the
8   accuracy of your estimates?
9   A.   Given the standard errors that I
10 saw, I feel confident in these point
11 estimates.
12   Q.   How do you calculate an EI
13 estimate using Professor King's software
14 without generating a confidence interval?
15   A.   You generate the standard
16 errors.
17   Q.   So is it correct that if you
18 hadn't calculated a confidence interval,
19 that means you also have not determined any
20 particular confidence level for these
21 estimates?
22   A.   I'm going to answer your
23 question this way: In Gary King's 1997
24 book, he discusses use of standard errors to
25 come up with a potential confidence interval

20 (Pages 74 - 77)

Page 78

1   Cole
2   for his estimates, and he states there that
3   given the underlying distribution that is
4   assumed for his model, that exact confidence
5   intervals are not appropriate. They're
6   going to be approximations.
7   So to answer your question --
8   to -- that's how I'm going to answer your
9   question.
10   Q.   All right. Let's take that in
11 pieces.
12   First in reference to Professor
13 King's 1997 book, are you aware of any
14 further work that has been done on the
15 ecological inference technique in the last
16 20 years?
17   A.   Yes, I am.
18   Q.   Are you aware of any additional
19 work that has been done with specific
20 reference to confidence intervals?
21   A.   Standard errors, but not
22 necessarily confidence intervals.
23   Q.   What do you mean by that?
24   A.   I mean in articles published
25 since 1997, authors refer to the standard

Page 79

1   Cole
2   errors are generated with the technique, but
3   not necessarily getting into setting up
4   confidence intervals.
5   Q.   If I use the term "confidence
6   level," do you know what that means?
7   A.   Yes.
8   Q.   So do you have an understanding
9   that a 95 percent confidence level is a
10 standard confidence level in social science
11 research?
12   A.   I'm going to answer it, it
13 depends.
14   Q.   It depends on what?
15   A.   Depends upon what area of
16 inquiry you're talking about.
17   I'll give you some examples. If
18 you have a directional hypothesis in social
19 sciences, a 90 percent confidence interval
20 can be set up. In the area of assessing the
21 randomness of a sample, lower confidence
22 intervals are often used.
23   Q.   Could you calculate confidence
24 intervals for your estimates for the 2013
25 election?

Page 80

1   Cole
2   A.   Given Gary King's guidance, we
3   could come up with the approximation to a
4   confidence interval for these data.
5   Q.   So you could generate
6   approximate confidence intervals for your
7   estimates for the 2013 election?
8   A.   Yes.
9   Q.   But you did not generate
10 approximate confidence intervals for the
11 2013 election, correct?
12   A.   I reviewed the standard errors
13 that were produced by EI and determined that
14 they were small enough to have confidence in
15 these estimates.
16   Q.   But you did not generate
17 approximate confidence intervals for the
18 estimates for the 2013 election, correct?
19   A.   I did not generate approximate
20 confidence intervals in writing, but I
21 examined the standard errors for each
22 estimate.
23   Q.   So one more time, you did not
24 generate approximate confidence intervals
25 for the 2013 election estimates and write it

Page 81

1   Cole
2   down?
3   A.   I did not write them down,
4   that's correct.
5   Q.   Did you generate approximate
6   confidence intervals in your mind?
7   A.   I did.
8   Q.   Do you recall what those
9   approximate confidence intervals were?
10   A.   I don't.
11   Q.   Do you recall whether they were
12 large confidence intervals?
13   A.   There was a range of confidence
14 intervals, but I felt they were tight enough
15 to have confidence in these results.
16   Q.   How confident in these results
17 are you?
18   A.   What do you mean by "confident"?
19   Q.   Are you very confident in these
20 results?
21   A.   Yes.
22   Q.   So you are very confident in
23 your estimate that Pierre Germain received
24 91.8 percent of non-Hispanic Black voters
25 votes in 2013?

21 (Pages 78 - 81)

Page 82

1   Cole
2   MR. GROSSMAN: Objection.
3   Q.   Is that right?
4   A.   I analyzed racially polarized
5   voting in several ways for this report. I
6   did correlation analysis, I did EI, I did
7   homogenous precinct analysis. I also did
8   supplemental qualitative research. I took
9   what is called a mixed method approach to
10 doing this study, which has been prevalent
11 now for about 20 years, where you use both
12 quantitative and qualitative information to
13 assess some research question.
14   Q.   Okay. But with respect to your
15 EI analysis, are you very confident in your
16 estimate that Pierre Germain received 91.8
17 percent of Black voters votes in the 2013
18 election?
19   A.   Given these other kinds of data
20 and results that I have, I find that these
21 estimates don't square with the other
22 approaches. As a matter of fact -- I'm just
23 going to leave it at that.
24   Q.   Does that mean you are not
25 confident that Pierre Germain receive 91.8

Page 83

1   Cole
2   percent of Black voters votes in 2013?
3   A.   I think at one point of my
4   report I wrote that I felt that these
5   results were inconclusive.
6   Q.   If these results are
7   inconclusive, does that mean that you are
8   not confident in your estimate that Pierre
9   Germain received 91.8 percent of Black
10 voters votes in 2013?
11   A.   Could you repeat that?
12   Q.   If you regard these estimates as
13 inconclusive, does that mean that you are
14 not confident that Pierre Germain received
15 91.8 percent of non-Hispanic Black voters
16 votes in 2013?
17   A.   What I am inconclusive about is
18 whether or not these results reflect
19 racially polarized voting.
20   Q.   Does that mean that you are, in
21 fact, confident that Pierre Germain received
22 91.8 percent of Black voters votes in 2013?
23   A.   Given the EI result and its
24 standard error, that would indicate a
25 relative tight confidence interval, but I am

Page 84

1   Cole
2   not confident in the overall pattern of
3   results given the correlations, given the
4   supplemental data that this reflects what's
5   going on.
6   Q.   Okay. With specific reference
7   to your estimate that 91.8 percent of
8   non-Hispanic Black voters voted for Pierre
9   Germain in 2013, are you confident in that
10 estimate?
11   A.   Given that the estimate is
12 disparate from the other pieces of data and
13 results, I'm not confident.
14   Q.   Did you do something different
15 in your EI analysis of 2013 that you did not
16 do for other years?
17   A.   I performed it the same way I
18 did the other years.
19   Q.   Did you use the same data for
20 the 2013 election that you used for the
21 other years?
22   A.   How could you use the same data?
23   Q.   Did you use the same sort of
24 data?
25   A.   The same sort of data, yes.

Page 85

1   Cole
2   Q.   So you used the same sort of
3   data for the 2013 EI estimate that you used
4   for the other years, correct?
5   A.   Correct.
6   Q.   But you are not confident in
7   your EI estimates for the 2013 election; is
8   that right?
9   A.   That's right.
10   Q.   Before moving on, I had a
11 question about methodology.
12   In this table you report
13 "Percentage of Latino voters voting for
14 candidate, EI," "Percentage non-Hispanic
15 Black Voters" and "Percentage Non-Hispanic
16 White Voters," correct?
17   A.   Yes.
18   Q.   What about other racial
19 categories in the district, do they figure
20 into your analysis?
21   A.   Each set of racial data is run
22 separately; so that Latinos versus everybody
23 else, Blacks versus everybody else, Whites
24 versus everybody else. So the vote totals
25 include Asians.

22 (Pages 82 - 85)

Page 86

Cole

1   Cole
2   Q.   So if I were to add up the
3   percentage -- if I were to turn your
4   percentage of Latino voters into real
5   numbers and the percentage of Black voters
6   into real numbers and the percentage of
7   White voters into real numbers, they would
8   not add up to the total vote count in the
9   last column?
10   A.   That's right.
11   Q.   Let's turn to page 28 of your
12   report. Paragraph 64 has an underlined
13   sentence that says, "Supplemental Evidence
14   Regarding Circumstances of the 2013 Board
15   Contests." Do you see that?
16   A.   I do.
17   Q.   What is "supplemental evidence"?
18   A.   This is evidence that I
19   collected to give factual context to the
20   racial bloc voting estimates.
21   Q.   Is there some recognized method
22   of collecting and analyzing supplemental
23   evidence that I could find in the literature
24   around ecological inference analysis?
25   A.   Not necessarily an ecological

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1   Cole
2   inference analysis, but in terms of mixed
3   method methodologies, yes.
4   Q.   Did you follow some
5   professionally recognized methodology in
6   analyzing and collecting supplemental
7   evidence regarding the 2013 board contests?
8   A.   I did.
9   Q.   What method was that?
10   A.   In collecting such evidence you
11   want to use a representative sample of data
12   and in this case in and around the
13   particular contest at hand.
14   Q.   Do you believe that you had a
15   representative sample of supplemental
16   evidence regarding the 2013 election?
17   A.   With respect to the news
18   articles, I do.
19   Q.   Do you not with respect to other
20   types of supplemental evidence?
21   A.   Well, the other kind of
22   supplemental evidence that I collected here
23   deals with the New York State educational
24   data on racial makeup of the schools, and
25   that's just direct information from the

Page 88

1   Cole
2   NYSED, N-Y-S-E-D, the NYSED website.
3   Q.   Why is the racial makeup of the
4   schools relevant evidence with respect to
5   the economic -- ecological inference
6   analysis of the 2013 elections?
7   A.   There are three kinds of
8   quantitative analyses that I did;
9   correlational, ecological inference and
10   homogenous precinct analysis. From those
11   three sets of quantitative analyses, I
12   generated racial bloc voting -- racially
13   polarized voting estimates.
14   Q.   Is the racial makeup of the
15   schools in the public school district
16   relevant to your ecological inference
17   analysis?
18   A.   I wasn't finished answering.
19   Q.   Okay.
20   A.   When you posed the question to
21   me, all you cited was EI, and I just want to
22   clarify that you mentioned ecological
23   inference. There are other quantitative
24   measures that I used; the correlational, EI
25   and HPA.

Page 89

1   Cole
2   Q.   Right.
3   I'm interested in EI because you
4   testified you're not confident in your
5   estimates using EI for the 2013 election.
6   The question is: Is the racial
7   makeup of the district's public school
8   relative to ecological inference analysis of
9   the 2013 election?
10   A.   I think the two sets of
11   information informed one another. I think
12   it's -- so the supplemental information
13   generates a factual context, the environment
14   in which people are voting.
15   You have a situation where
16   public school advocates support a slate of
17   candidates whose agenda is one that is
18   largely favorable to public schools. My
19   analyses indicate that those candidates
20   always lose.
21   You have another dimension to
22   the community where slates of candidates
23   supported by private school interests
24   support them. They invariably win.
25   This is in a setting where

23 (Pages 86 - 89)

Page 90

1   Cole
2   public school advocates are invested in
3   schools that are virtually all minority,
4   you've got private school advocates
5   promoting a slate of candidates, and
6   that private school interests lies in
7   schools that are virtually all White.
8   I'm not finished. And I believe
9   that that kind of information is important
10 for the court to consider.
11   Q.   When you say "public school
12 advocates," is that the same as a phrase you
13 also use in your report "public school
14 community"; do you recall that phrase?
15   A.   Yes.
16   Q.   Is everyone in the public school
17 community from your understanding Black and
18 Latino?
19   A.   No.
20   Q.   Are there White people that you
21 would say qualify as public school advocates
22 in your understanding?
23   A.   Yes.
24   Q.   Does being a public school
25 advocate say anything about whether a person

Page 91

1   Cole
2   is Black or White?
3   A.   Not necessarily.
4   Q.   When you say "private school
5   interests," is that the same as the phrase
6   "private school community" that you also use
7   in your report?
8   A.   It's similar.
9   Q.   When you say "private school
10 community," you mean Orthodox and Hasidic
11 Jews in East Ramapo?
12   A.   Not necessarily.
13   Q.   Mainly Orthodox and Hasidic
14 Jews?
15   A.   Much of the materials reviewed
16 were spoken or written by folks of the
17 Jewish faith.
18   Q.   By "private school community,"
19 do you mean mainly Orthodox and Hasidic
20 Jewish people?
21   A.   The materials I found are
22 generated largely by them, yes.
23   Q.   Just so I understand, when you
24 refer to the "private school community," you
25 mean mainly Orthodox and Hasidic Jewish

Page 92

1   Cole
2   people?
3   A.   Not necessarily just them, but
4   much of the material I see is from them.
5   Q.   So is that right, mainly
6   Orthodox and Hasidic Jewish people?
7   A.   I'd probably go along with that.
8   Q.   When you say "private school
9   community," you mean mainly Orthodox and
10 Hasidic Jewish people?
11   A.   I'd go along with that.
12   MR. GROSSMAN: Off the record.
13   (Discussion off the record.)
14   Q.   Turning back to the 2013
15 election results reported on the bottom of
16 page 40 of your report, let's walk through
17 these.
18   Starting with the race for the
19 seat of Moses Friedman in 2013, in the
20 column "Percent Latino voters voting for
21 candidate, EI," you are not confident in
22 your estimate that 99.6 percent of Latino
23 voters voted for Margaret Tuck, correct?
24   A.   That's not correct.
25   Q.   Are you confident in your

Page 93

1   Cole
2   estimate that 99.6 percent of the Latino
3   voters voted for Margaret Tuck in 2013?
4   A.   Yes.
5   Q.   But you are not confident in
6   your estimate that 29.3 percent of Black
7   voters voted for Margaret Tuck; is that
8   correct?
9   A.   That's correct.
10   Q.   Why are you confident in one
11 estimate, but not the other?
12   A.   For one, the Latino information,
13 when you compare these results with the
14 correlation analysis, they're consistent.
15 When you compare the estimates for the Black
16 voters with the correlational evidence,
17 they're not consistent.
18   Q.   Let's come back to that. I need
19 your answers for the rest of these.
20   Are you confident in your
21 estimate that 30.5 percent of non-Hispanic
22 White voters voted for Margaret Tuck?
23   A.   I am.
24   Q.   So with respect to this race, is
25 the only estimate that you are not confident

24 (Pages 90 - 93)

Page 94

1   Cole
2   in your estimate of the percentage of
3   non-Hispanic Black voters?
4   A.   That's correct.
5   Q.   Let's look at the seat of Nathan
6   Losman, are you confident in your estimate
7   that Eustache Clerveaux received 99.5
8   percent of voters voting -- of Latino
9   voters?
10   A.   Yes.
11   Q.   And are you confident in your
12 estimate that 30.2 percent of White voters
13 voted for Eustache Clerveaux?
14   A.   Yes.
15   Q.   Are you confident in your
16 estimate that 7.6 percent of Black voters
17 voted for Eustache Clerveaux?
18   A.   No.
19   Q.   Looking at the seat of Bernard
20 Charles, are you confident in your estimate
21 that 99.4 percent of Latino voters voted for
22 Robert Forrest?
23   A.   Yes.
24   Q.   Are you confident in your
25 estimate that 31.6 percent of non-Hispanic

Page 95

1   Cole
2   White voters voted for Robert Forrest?
3   A.   Yes.
4   Q.   Are you confident in your
5   estimate that 10.6 percent of non-Hispanic
6   Black voters voted for Robert Forrest?
7   A.   No.
8   Q.   Did you do anything different
9   methodically in estimating the percentage of
10 Black voter support for candidates in May
11 21, 2013?
12   MR. GROSSMAN: Objection.
13   A.   Different than what?
14   Q.   Different than the methodology
15 you used for the percent of Latino voters?
16   A.   No, the same methods.
17   Q.   The same sorts of data?
18   A.   The same sorts of data.
19   Q.   Why are you confident in your
20 estimates for percentage of Latino voter
21 support and not percentage for non-Hispanic
22 Black voter support?
23   A.   Those estimates are consistent
24 with the correlational analysis, the
25 estimates for the Latino. The EI estimates

Page 96

1   Cole
2   for Black voters are not consistent with the
3   correlation analyses.
4   Q.   Are you saying that the
5   correlation analysis is more reliable than
6   the ecological inference analysis?
7   A.   I'm not.
8   Q.   Why would you -- strike that.
9   Do you give more weight to the
10 correlation analysis than to the ecological
11 inference analysis?
12   A.   Not necessarily.
13   Q.   Are you giving more weight to
14 the correlation analysis in your estimates
15 for the percentage of Black voters than you
16 are giving it in other categories?
17   A.   Not necessarily more weight.
18   Q.   Not necessarily more weight.
19   Are you crediting the
20 correlation analysis more than the
21 ecological inference analysis for your
22 estimates of percentage of Black voters
23 voting for the candidates in 2013?
24   A.   Not necessarily.
25   Q.   What do you mean by "not

Page 97

1   Cole
2   necessarily"?
3   A.   There is no formal weighting
4   process. There is a discrepancy between the
5   two, which would lead me to have less
6   confidence in the disparate Black findings.
7   Q.   Why does the correlation
8   analysis that you performed influence your
9   confidence in your estimates generated by
10 ecological inference?
11   A.   Gary King himself suggests that
12 when you have results that don't necessarily
13 fit an established pattern that you need to
14 look at other sources of information to
15 establish confidence in the EI results. And
16 he specifically suggests going to
17 supplemental evidence, such as journalistic
18 accounts, so I have journalistic accounts, I
19 have correlation analyses, I compared the
20 White EI to the HPA. They're consistent.
21   Q.   So the difference between the
22 percentage of Latino voters voting for a
23 candidate and Black voters voting for a
24 candidate is that the percentages you
25 estimated for Black voters did not fit your

25 (Pages 94 - 97)

Page 98

1   Cole
2   expected pattern?
3   A.   Not an expected pattern. A
4   pattern of the other data before us. I
5   didn't have expectations, just established
6   patterns.
7   Q.   Is it possible for the
8   correlation analysis and the ecological
9   inference analysis for the Black voters
10   voting for the candidate to both be correct?
11   A.   It's possible.
12   Q.   Why do you assume then that the
13   percentage of Black voters voting for a
14   candidate that you generated using
15   ecological inference is incorrect?
16   A.   I didn't say incorrect. I said
17   I have less confidence in them, and I -- in
18   terms of the quantitative results, I find
19   them basically in the EI inconclusive. I
20   don't have an answer for you.
21   Q.   In paragraph 28 of your report
22   in describing correlation analysis you say
23   that "if there are only a small number of
24   precincts, no matter how strong the actual
25   racial polarization, one may not be able to

Page 99

1   Cole
2   obtain a high level of statistical
3   significance in the measurement of the
4   degree of polarization." Do you see that?
5   A.   I do.
6   Q.   Are ten precincts sufficient to
7   obtain a high level of statistical
8   significance in the measurement of the
9   degree of polarization using correlation
10   analysis?
11   A.   It depends.
12   Q.   In this case?
13   A.   It depends upon the distribution
14   of the data.
15   My point here was that with a
16   sample size of ten, you can generate a
17   strong correlation coefficient, a big
18   effect, but not necessarily be statistically
19   significant. It's just a function of the
20   sample size.
21   Q.   In this case, the specific
22   reference to May 21, 2013, were ten
23   precincts sufficient to obtain a high level
24   of statistical significance in the
25   measurement of the degree of polarization?

Page 100

1   Cole
2   A.   Do you want to repeat that?
3   Q.   Yes.
4   In 2013 for that particular
5   analysis, were ten precincts sufficient to
6   obtain a high level of statistical
7   significance in your measurement of the
8   degree of polarization?
9   A.   That question is illogical to
10   me.
11   The point I'm making in the
12   report is that with a sample size of ten,
13   you don't necessarily have to rely on a high
14   level of statistical significance to rely on
15   it.
16   Q.   Right.
17   I'm asking whether you were able
18   to obtain a high level of statistical
19   significance.
20   MR. GROSSMAN: Objection.
21   A.   There was a -- for 2013 there
22   were -- there was statistical significance
23   for Latinos in the correlation, there were
24   statistical significance for the Whites, but
25   not for the Blacks, but -- I'm sorry, I've

Page 101

1   Cole
2   finished my answer.
3   Q.   Okay. In your answer, when you
4   referred to the statistical significance for
5   Latino voters and the White voters, was
6   there a high level of statistical
7   significance?
8   A.   There is no necessary absolute
9   threshold as to what a high level of
10   statistical significance is.
11   Q.   In your expert opinion, did you
12   obtain a high level of statistical
13   significance?
14   MR. GROSSMAN: Objection.
15   A.   I don't have an absolute
16   threshold as to what a high level of
17   statistical significance is. I would say
18   that a value of less than .001 is a greater
19   degree of significance than .021.
20   MR. LEVINE: Let's take that
21   break.
22   (Luncheon recess: 1:30 p.m.)
23
24
25

26 (Pages 98 - 101)

Page 102

1   Cole
2   A F T E R N O O N   S E S S I O N
3   (Time noted: 2:13 p.m.)
4   S T E V E N P C O L E, P h D, resumed
5   and testified as follows:
6   EXAMINATION BY (CONT'D.)
7   MR. LEVINE:
8   MR. LEVINE: Could you read back
9   for the witness the last question and
10   answer so we can pick up where we left
11   off?
12   (Record read.)
13   Q.   Turning to the document marked
14   as Cole Exhibit 2, your expert report, turn
15   to page 43 at the bottom of the page. This
16   is a "Summary of the Correlation Analyses
17   for the May 21, 2013 Elections," correct?
18   A.   Correct.
19   Q.   Did you obtain statistical
20   significance for the percentage of
21   non-Hispanic Black voters voting for
22   candidate for the seat of Moses Friedman?
23   A.   No.
24   Q.   For the seat of Nathan Losman,
25   did you obtain statistical significance in

Page 103

1   Cole
2   the estimate for the percentage of
3   non-Hispanic Black voters voting for
4   candidate?
5   A.   Could you repeat that?
6   Q.   Sure.
7   The same question for seat of
8   Moses Friedman that we asked, the same
9   question for the seat of Nathan Losman. Did
10   you achieve statistical significance for
11   your estimate for the percentage of
12   non-Hispanic Black voters voting for
13   candidate?
14   A.   For the seat of Nathan Losman,
15   no.
16   Q.   The same question for the seat
17   of Bernard Charles on page 44, did you
18   obtain statistical significance for the
19   estimate for the percentage of non-Hispanic
20   Black voters voting for candidate?
21   A.   No.
22   Q.   Let's turn to page 11 of your
23   report, the bottom of the page, the last
24   sentence at the bottom of page that runs to
25   the top of page 12. Just so everybody can

Page 104

1   Cole
2   follow along, that sentence says, "For the
3   correlation analysis, a single regression is
4   preferred where the researcher seeks the
5   association between the racial composition
6   of the precincts and the percentage of the
7   votes cast for candidates." Do you see
8   that?
9   A.   I do.
10   Q.   You have a footnote to Footnote
11   17. Do you see that there?
12   A.   I do.
13   Q.   And you're citing for that
14   proposition to an article by James Loewen
15   and Bernard Grofman, "Recent Developments in
16   Methods Used in Voting Right Litigation,"
17   Urban Lawyer 1989, correct?
18   A.   Correct.
19   Q.   Did you perform a single
20   regression analysis like you have described
21   here?
22   A.   Let me clarify what I did. The
23   same variables are used to calculate a
24   correlation coefficient that are used in the
25   setup for the regression, and you get

Page 105

1   Cole
2   various results from the -- from that kind
3   of analysis. One is the correlation which
4   is the association between the two
5   variables. You can also use the regression
6   to get estimates of racial bloc voting. I
7   did not do that. What I used the single
8   regression for was to get the correlation
9   coefficients.
10   Q.   Why?
11   A.   To answer the question in
12   general, is there an association between
13   racial composition of the precincts and
14   voter outcome.
15   Q.   What is the distinction? I'm
16   not sure I understand the distinction that
17   you've drawn.
18   A.   Correlation between the racial
19   composition of the precincts and the
20   outcome, it's a measurement of association.
21   Are they associated, those two measures. If
22   one increases, does the other increase. You
23   would use the results of the regression as a
24   more of a prediction. Does -- and the
25   regression is more of a form Y equals Ax

27 (Pages 102 - 105)

Page 106

1   Cole
2   plus B, the equation for a straight line,
3   where you would get -- you could figure out
4   White crossover voting for that and an
5   estimate of Black cohesion.
6   Q.   So that makes sense.
7   Is it possible to do one without
8   doing the other, right; don't you have to do
9   the first step to do the regression?
10   A.   You could just run the
11 correlation all by itself.
12   Q.   But to do the regression, you
13 have to run the correlation, right, because
14 you have to regress something?
15   A.   You could report those
16 regression estimates without reporting the
17 correlation. I mean, they can be done
18 separately.
19   Q.   Maybe they could be reported
20 separately, but can you actually do the
21 analysis without -- can you actually do the
22 regression analysis without doing the
23 correlation analysis?
24   A.   Yes.
25   Q.   How do you do that?

Page 107

1   Cole
2   A.   The same data -- if you're --
3   you need the same data to run both, let's
4   put it that way.
5   Q.   What you are saying is that you
6   could just run different programs and it
7   will generate a different report?
8   A.   Yes.
9   Q.   On page 11, same sentence, you
10 say, "a single regression is preferred where
11 the researcher seeks the association between
12 the racial composition of the precincts and
13 the percentage of the votes cast for a
14 candidate." What do you mean by
15 "preferred"?
16   A.   So the single regression is
17 preferred where you use, as an example,
18 percent Black CVAP as the predictor variable
19 and percent of the vote cast for candidate
20 A. There are other regressions that could
21 be used to generate correlations. I
22 preferred what is called this Goodman's
23 single regression. That's what I meant by
24 that.
25   Q.   Have you read the article cited

Page 108

1   Cole
2   in Footnote 17?
3   A.   I have. It's been a while, but
4   I have.
5   MR. LEVINE: Let's mark the
6   article as Cole Exhibit 3.
7   (Cole Exhibit 3, article cited
8   in Footnote 17 of expert report,
9   marked for identification, as of this
10   date.)
11   Q.   So I can represent to you that
12 this is the copy of the article that was
13 provided to us by plaintiffs' counsel, and I
14 believe it's the same as the article cited
15 in Footnote 17.
16   Take a look at what is marked
17 page 595 in the article at the top of the
18 page.
19   A.   I'm on page 595.
20   Q.   At the bottom of this page there
21 is a paragraph, and just so everybody can
22 follow along, I'll read a couple of
23 sentences because I want to ask you a
24 question about them. Starting with the word
25 "however" in the middle the paragraph, do

Page 109

1   Cole
2   you see where I am?
3   A.   I do.
4   Q.   "However, voting rights cases
5   usually involve seeing if there are
6   important differences between White and
7   Black RBV, not calculating specific and
8   exact estimates of the amount of RBV of each
9   group, thus errors introduced by ordinary
10 single equation regression are usually of
11 modest legal importance because regression
12 results usually show major differences
13 between White support for White candidates
14 and Black support for White candidate," and
15 then there is a footnote.
16   Have you followed along with me
17 so far?
18   A.   Yes.
19   Q.   Did you perform a single
20 equation regression of the type described in
21 the sentence I just read in this case?
22   A.   I'm just going to make sure.
23 I'm going to look at the graph on page 595.
24 And for the X-axis, it's percent of White
25 registered, and on the Y-axis or ordinate,

28 (Pages 106 - 109)

Page 110

1   Cole
2   it's percent of Black vote of registered
3   voters, I assume, for some candidate.
4   So to answer your question, I
5   used the correlation coefficient from such
6   an analysis, not the racial bloc voting
7   estimates.
8   Q.   So you did do a single equation
9   regression, but with different inputs,
10 right; is that a fair characterization?
11   A.   No, the same inputs.
12   Q.   The same inputs, not a single
13 equation regression?
14   A.   Same inputs, single regression,
15 but reported the correlation coefficient
16 from it, not the racial bloc voting
17 estimates, which this paragraph is dealing
18 with.
19   Q.   Okay. Take a look at Footnote 5
20 on the other page, and just so everybody can
21 follow along, I'll read it. "Two
22 circumstances can make the errors larger.
23 If neither turnout nor registration data are
24 available, the analyst must use voting age
25 population data for the independent

Page 111

1   Cole
2   variable. Using inconsistent denominators
3   with VAP data inadvertently assumes that
4   registration as well turnout and roll-on are
5   identical for each group. Also the presence
6   of Hispanic, Asians or Native Americans in
7   addition to Whites and Blacks can cause
8   estimates to be off by large amounts. Using
9   inconsistent denominators because these
10 groups may not be registered in the same
11 proportion as Whites or Black. Moreover,
12 their residential distribution may be
13 somewhat correlated with Whites or with
14 Blacks requiring appropriate statistical
15 techniques to avoid specification error."
16   So the question with respect to
17 this case is: Am I correct that for your
18 correlation analysis you did not use either
19 turnout or registration data; is that right?
20   A.   I used -- for the estimate of
21 racial compositions of the precincts, I
22 used, for whatever race I was analyzing, the
23 citizen voting age population.
24   Q.   You used the voting age
25 population data for your independent

Page 112

1   Cole
2   variable, correct?
3   A.   Correct.
4   Q.   For your correlation analysis,
5   you had three racial categories, right;
6   White, Latino and Black, correct?
7   A.   Correct.
8   Q.   Isn't this footnote saying that
9   where you have both of those conditions
10 using the voting age population data and
11 with more than two racial categories
12 estimates can be off by large margins using
13 a single regression?
14   A.   I did not use the single
15 regression to generate racial bloc voting
16 estimates.
17   Q.   Right.
18   Does that mean that the
19 correlation analysis would not be subject to
20 large errors?
21   A.   Those are two independent
22 situations.
23   Q.   Why?
24   A.   For the correlation analysis, we
25 are simply looking at the association

Page 113

1   Cole
2   between racial composition of the precincts
3   and outcome. That was the analysis that was
4   used in Gingles and that continues to be a
5   form of analysis that is used in research
6   related to analysis of racially polarized
7   voting.
8   Q.   In Gingles do you know whether
9   voting age population data was the
10 independent variable that was used?
11   A.   I'm not sure. It was a North
12 Carolina case. They may very well have had
13 registration data by race. I'm not sure.
14   Q.   In Gingles do you know whether
15 they were performing a correlation analysis
16 with more than two racial categories?
17   A.   I think they were looking at
18 Blacks and Whites.
19   Q.   Are you aware of any case where
20 a correlation analysis was performed with a
21 single regression where the independent
22 variable that was used was voting age
23 population data and there were three racial
24 categories?
25   A.   Once again, in terms of my

29 (Pages 110 - 113)

Page 114

1   Cole
2   correlation results, I did not rely on a
3   single regression. I simply correlated
4   racial composition of a precinct with voter
5   outcome, period.
6   Q.   When this methodology, this
7   correlation analysis that you performed was
8   developed in 1989 or thereabouts, had
9   ecological inference been developed yet?
10   A.   First of all, I want to correct
11   you. Correlation analysis was not developed
12   in 1989. Correlation analysis has been
13   around a long time.
14   Q.   Good point.
15   When this article came out in
16   1989, had ecological inference been
17   developed yet?
18   A.   Gary King's book was published
19   in 1997.
20   Q.   Nothing in this article would
21   suggest that the correlation analysis should
22   be used to check results of an ecological
23   inference analysis, right?
24   A.   I don't think Jim Loewen or
25   Bernie Grofman were aware of EI at that

Page 115

1   Cole
2   point.
3   Q.   Turning back to the report on
4   page 40, again the bottom of the page, back
5   to the 2013 election results, and looking at
6   the seat of Bernard Charles, as an example,
7   you estimated using the ecological inference
8   technique that 89.7 percent of Black voters
9   voted for Bernard Charles, correct?
10   A.   Correct.
11   Q.   And you performed a correlation
12   analysis and concluded that you did not
13   achieve a statistical -- a result that was
14   statistically significant, correct?
15   MR. GROSSMAN: Objection.
16   A.   So the correlation analysis with
17   respect to Bernard Charles showed a
18   correlation of minus .50 with a p value of
19   .142. I would not consider the .142
20   statistically significant; however, as I
21   pointed out in the report correlations of
22   .50 are considered large correlations and in
23   many social scientific areas that
24   correlation of a .50 is relied upon. It's
25   considered a large correlation.

Page 116

1   Cole
2   Q.   Is it possible for that
3   correlation to be reliable and also for your
4   estimate that you generated using an
5   ecological inference also be reliable?
6   A.   It's possible.
7   Q.   Do you think that both those
8   results are reliable here?
9   A.   It's possible.
10   Q.   It's possible, all right. Good.
11   Let's turn back to page 31,
12   paragraph 68. The final sentence in
13   paragraph 68 says, "However, EI results
14   indicated that Black preferred and White
15   preferred candidates were successful."
16   Is that your opinion as you sit
17   here today?
18   A.   It is, but it's qualified by
19   something I said later.
20   Q.   Well, let's look at paragraph 69
21   where you say, "The supplemental evidence
22   suggests Black and Latino voters preferred
23   the losing candidates." So does that mean
24   that the supplemental evidence leads you to
25   a result that is the opposite of the EI

Page 117

1   Cole
2   result?
3   A.   I would say that the
4   supplemental evidence is contrary to what
5   the EI results were.
6   Q.   Let's look at the things that
7   you list here as the supplemental evidence
8   that leads you to that conclusion.
9   You point to, and I'm looking at
10   the next sentence, Given the polarized
11   racial composition of the public and private
12   schools, the public endorsements of Save our
13   Schools and SERTA, and Ms. Hatton's
14   observations about the decisions of Germain,
15   Charles and Corado not to campaign in public
16   or to attend the candidate forum within the
17   minority community. The evidence suggests
18   that minority voters in the district would
19   have been likely to prefer the candidates on
20   the public school slate. And then you say,
21   However, the private school slates messaging
22   as reported by Ms. Hatton, as well as the
23   fact that all six candidates were Black or
24   Latino could have caused some Black voters
25   to vote for the private school slate.

30 (Pages 114 - 117)

Page 118

Cole

1
2   I would like to take each of
3   these in turn starting with the last.
4   So who is Ms. Hatton?
5   A.   Ms. Hatton -- I'm going to go
6   further back into the report -- she's a --
7   I'm looking at my report, page 29,
8   Ms. Hatton, who is a public school, quote,
9   parent education activist in East Ramapo.
10   Q.   Did you speak with Ms. Hatton?
11   A.   No.
12   Q.   Do you know Ms. Hatton?
13   A.   No.
14   Q.   Is Ms. Hatton Black?
15   A.   My understanding is that she is
16   not.
17   Q.   Is Ms. Hatton Latino?
18   A.   My understanding is that she is
19   not.
20   Q.   Why is Ms. Hatton in your view a
21   credible source of information about Black
22   and Latino voter preference?
23   A.   Well, the school board
24   identified three official newspaper sources
25   and the Rockland Times was one of them, and

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Cole

1
2   she published this letter to the editor.
3   Q.   What makes her letter to the
4   editor a credible source of evidence about
5   Black and Latino voter preferences?
6   A.   This is part of an overall
7   search of articles concerning the 2013
8   contest. This was a -- I believe this was
9   an article that was suggested by counsel as
10   one I should at least look at.
11   Q.   Did counsel tell you to rely on
12   it?
13   A.   No. It's up to me to rely on
14   it.
15   Q.   So why did you find it to be a
16   reliable source of evidence about Black and
17   Latino voter preferences in the 2013
18   election?
19   A.   I had no reason not to consider
20   her a reliable source. This is a letter to
21   the editor that the Rockland Times felt that
22   it could -- that it could publish in and
23   around the election.
24   Q.   So letters to the editor to the
25   Rockland County Times are a source of

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Cole

1
2   reliable evidence about Black and minority
3   voter preference unless you have reason to
4   disbelieve them?
5   A.   This is a letter published in a
6   paper that the public can read and I also
7   included a letter from the Southeast
8   Taxpayers Association, Ms. Kalman Weber,
9   K-A-L-M-A-N.
10   Q.   Is that the article you're
11   referencing in Footnote 60?
12   A.   Right.
13   Q.   Yes.
14   Footnote 60 refers to an article
15   from October 18, 2015?
16   A.   Right. I'm sorry. What I meant
17   to say is in relation to 2013, I included
18   the letter by Yehuda Weissmandl, president
19   of the board, who countered Ms. Hatton.
20   Q.   Is Yehuda Weissmandl a credible
21   source of evidence about Black and Latino
22   voter preferences in East Ramapo?
23   A.   He's the president of the school
24   board, and what these supplemental pieces of
25   information demonstrate as to the subsequent

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Cole

1
2   ones is that they're just evidence of two
3   separate slates, two separates groups of
4   candidates. This is not information that is
5   in isolation. You'll see similar kinds of
6   reports from other community members. So
7   this was...
8   Q.   So how does this evidence, the
9   letter to the editor from Ms. Hatton and
10   another letter to the editor from
11   Mr. Weissmandl, how does that contribute to
12   your conclusion that the supplemental
13   evidence outweighs your EI estimate for the
14   2013 board contests, for EI estimates?
15   (Record read.)
16   A.   Those are your words. I didn't
17   say they outweigh.
18   Q.   Actually, that's not true. In
19   paragraph 9 in the last sentence you said,
20   "In 2013 all six candidates were people of
21   color, but the weight of evidence indicates
22   that the winning candidates, who were
23   endorsed by the private school slate and the
24   preferred candidates of White voters, were
25   not minority preferred candidates." Those

31 (Pages 118 - 121)

Page 122

1   Cole
2   are your words.
3   A.   Where are you reading?
4   Q.   Paragraph 9, the last sentence.
5   A.   Paragraph 9.
6   MR. GROSSMAN: It's on page 3.
7   A.   I wrote, "In 2013 all six
8   candidates were people of color, but the
9   weight of evidence indicates that the
10 winning candidates, who were endorsed by the
11 private school and preferred candidates of
12 White voters, were not minority preferred
13 candidates."
14   That does not say that the
15 supplement evidence outweighs EI.
16   Q.   What is the weight of evidence
17 that you refer to in paragraph 9?
18   A.   Correlational evidence,
19 homogenous precinct analysis, evidence and
20 supplemental evidence.
21   Q.   Okay. So how does the
22 supplemental evidence that we just discussed
23 involving a letter from Ms. Hatton, a letter
24 from Mr. Weissmandl contribute to your
25 conclusion that the weight of evidence is

Page 123

1   Cole
2   against your EI estimate?
3   A.   The racially polarized voting
4   estimates from 2015 and 2017 indicate
5   racially polarized voting, a divided
6   electorate, correlational evidence suggests
7   that as the percentage increase, for
8   example, of Blacks in precincts increases,
9   the support for particular candidates
10 increase. The Black preferred candidates
11 and Latino preferred candidates were
12 supported by public school advocates and
13 they invariably lost. That's how I believe
14 this kind of supplemental information can
15 provide factual context to the quantitative
16 information.
17   Q.   So as I understand it, you
18 testified before, that your correlation
19 analysis for 2013, particularly with respect
20 to the Black vote, can be reliable and also
21 your EI estimate for 2013 for the Black vote
22 can be reliable, right, they're not
23 necessarily mutually exclusive; is that
24 right?
25   MR. GROSSMAN: Objection.

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1   Cole
2   Q.   Is that right?
3   A.   Could you repeat the question?
4   Q.   Yes.
5   The results of your correlation
6   analysis for the Black vote in 2013 and the
7   estimate that you generated for Black vote
8   in 2013 are not mutually exclusive; is that
9   right?
10   A.   You're going to have to explain
11 what you mean by "mutually exclusive."
12   Q.   What I mean is that your EI
13 analysis can be reliable and your
14 correlation analysis also can be reliable,
15 they're not exclusive.
16   A.   It's possible that they're both
17 reliable, yes.
18   Q.   Okay. And the supplemental
19 evidence that you're relying on consists of
20 your decision to credit Ms. Hatton's
21 observations about Black and Latino voter
22 preferences and another factor, which we
23 have not discussed yet, publicized
24 endorsements of Save Our Schools and SERTA.
25   Why are the publicized

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1   Cole
2   endorsements of Save Our Schools and SERTA
3   so significant in terms of supplemental
4   evidence?
5   A.   Where are you reading from?
6   Q.   Paragraph 69, page 31.
7   A.   These sources cited in 69 --
8   1969 (sic) are further examples of community
9   support for one slate or another, and the --
10 once again, the public school sided
11 endorsements invariably are connected with
12 candidates who run together, who have been
13 preferred candidates, 2015 to '17, who
14 always lose, and the opposite is true of the
15 private schools.
16   Q.   Just so I understand, Save Our
17 Schools and SERTA as organizations, they're
18 political organizations, not racial
19 organizations, right?
20   A.   Correct.
21   Q.   So doesn't that mean that you're
22 conflating endorsements by political
23 organizations with support of racial groups?
24   A.   The issue at hand in these kinds
25 of analyses is the preferred candidate. The

32 (Pages 122 - 125)

Page 126

1   Cole
2   candidate does not necessarily have to be of
3   a particular race or not. It is the
4   preferred candidate of a racial group.
5   Q.   Right.
6   What I'm asking is why do you
7   think that an endorsement of an organization
8   called Save Our Schools tells you anything
9   about Black voter preference in East Ramapo?
10   A.   The consistency between those
11   preferences as outlined in the supplemental
12   evidence and Black support and Hispanic
13   support for public school agendas to me is
14   consistent and provides a factual context, a
15   factual underpinning.
16   Q.   Right. It's consistent with
17   people who are endorsed by Save Our Schools
18   losing elections.
19   What I want to know is: Why are
20   you drawing a connection between that and
21   Black voter preferences?
22   A.   The connection is they're
23   supporting a slate of candidates running
24   together who are not successful, who haven't
25   been successful.

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1   Cole
2   Q.   Right. But the Voting Rights
3   Act doesn't protect Save Our Schools
4   candidates from losing elections. I'm
5   trying to understand why Save Our Schools
6   endorsement is something that you regard as
7   evidence of Black voter preferences?
8   A.   The racially polarized voting,
9   the quantitative results can provide -- I'm
10   sorry, the supplemental evidence can provide
11   a context to assess the factual consistency
12   of the racial bloc voting estimates. The
13   fact that we've got public schools that are
14   virtually all non-White, the fact that we
15   have organizations supporting the public
16   schools, regardless of the race of the
17   people in these organizations --
18   Q.   Well, I'm sorry to interrupt
19   you, but that's what I'm getting at, right?
20   Save Our Schools is not an organization that
21   is limited to any racial category. So why
22   is the endorsement of Save Our Schools
23   something that you considered to be
24   supplemental evidence that is relevant to
25   Black voter preference?

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1   Cole
2   A.   It's evidence of a divided
3   community.
4   Q.   What if Black people don't like
5   Save Our Schools organization?
6   A.   That's fine.
7   Q.   How would you know one way or
8   the other?
9   A.   I don't.
10   Q.   Why would that be useful
11   evidence?
12   A.   This is -- you connect public
13   schools that are virtually all non-White.
14   Q.   Do they vote?
15   A.   Do the schools vote?
16   Q.   Yes. Do the public school
17   students vote?
18   A.   Of course not.
19   Q.   Then that doesn't really answer
20   my question about Black voter preference and
21   its relationship with Save Our Schools.
22   A.   The question is are candidates
23   of choice of Blacks and Hispanic defeated by
24   White voters voting as a bloc usually.
25   Q.   Let me ask you one final

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1   Cole
2   question about 2013. Turning back to page
3   40, at the bottom of the page, if I were to
4   assume --
5   A.   Where are we reading?
6   Q.   Bottom of page 40, back to the
7   2013 results.
8   If we assume that the EI
9   estimate that you calculated for 2013 is
10   reliable and we set aside the supplement
11   evidence and the correlation analysis and we
12   just rely on the EI analysis, it would show
13   that MaraLuz Corado, Pierre Germain and
14   Bernard Charles were the Black preferred
15   candidates in 2013, correct?
16   A.   That's correct.
17   Q.   And it would also show that the
18   MaraLuz Corado and Pierre Germain and
19   Bernard Charles were the White preferred
20   candidates in 2013, correct?
21   A.   Correct.
22   Q.   And so the 2013 election would
23   not be racially polarized if we assume the
24   EI is correct; is that right?
25   A.   If we assumed -- if we're only

33 (Pages 126 - 129)

Page 130

1   Cole
2 looking at the EI evidence by itself, it's
3 polarized with respect to Latinos and Whites
4 and not between Blacks and Whites.
5   Q.   Also it would be polarized
6 between Blacks and Latinos, wouldn't it?
7   A.   It would.
8   Q.   Turn to page 39, the May 19,
9 2015 election at the bottom of the page. I
10 would like to ask you some questions about
11 these EI results.
12   Take a look at the race for the
13 seat of Jacob Lefkowitz. This is a
14 three-way head-to-head race between or among
15 Jacob Lefkowitz, Sabrina Charles Pierre and
16 Alan Keith Jones, correct?
17   A.   Correct.
18   Q.   Looking at the "Percentage of
19 Latino Voters Voting for Candidate, EI"
20 column, you calculated an estimate of 0.7
21 percent for the percentage of Latino voters
22 who voted for Jacob Lefkowitz, correct?
23   A.   Correct.
24   Q.   You calculated 64.2 percent of
25 the Latino voters who voted for Sabrina

Page 131

1   Cole
2 Charles Pierre, correct?
3   A.   Correct.
4   Q.   For Alan Keith Jones there is an
5 asterisk. At the bottom of the page the
6 asterisk says, "Indeterminate." What does
7 that mean?
8   A.   It means if the EI program
9 doesn't have enough information to calculate
10 an estimate, it won't, and that's what
11 happened here.
12   Q.   Why would it not have enough
13 information?
14   A.   Jones only got 468 votes.
15 That's why.
16   Q.   So a low amount of votes is
17 significant to the EI analysis?
18   A.   Well, if the algorithms can't --
19 in general, indeterminate votes are likely
20 with smaller number of vote totals.
21   Q.   How could it be that you were
22 able to calculate Sabrina Charles Pierre
23 received 64.2 percent, Jacob Lefkowitz got
24 .7 percent and then not be able to determine
25 what Alan Keith Jones got; wouldn't he just

Page 132

1   Cole
2 get the remainder?
3   A.   Not necessarily.
4   Q.   Why not?
5   A.   These results are generated
6 independently. This is not like a
7 regression where you could subtract a result
8 from one and that would be your estimate.
9 Given the way that King is devised, these
10 numbers don't necessarily add up to 100
11 percent. The Jones estimate is based on 468
12 votes; whereas, Charles Pierre is based on
13 4,600 votes, and Lefkowitz 3,000 -- 6,380.
14   Q.   So if you were to take Alan
15 Keith Jones out of the equation because
16 you're independently evaluating them, how
17 can it be that Sabrina Charles Pierre got
18 64.2 percent of the vote and Jacob Lefkowitz
19 got 0.7 percent of the vote; aren't we
20 missing a fairly large percent of the vote
21 in that estimate?
22   A.   These percentages are
23 percentages of Latino voters.
24   Q.   Right.
25   What happened to the other

Page 133

1   Cole
2 30-something percent?
3   A.   We don't know because EI wasn't
4 able to generate an estimate given the small
5 number of votes that Jones got.
6   Q.   Well, but there were a large
7 number of votes for Jacob Lefkowitz, right?
8   A.   Based on 6,380 votes.
9   Q.   And there were a large number of
10 votes for Sabrina Charles Pierre, right?
11   A.   4,600.
12   Q.   Are you confident in your
13 estimate of 64.2 percent of the Latino vote
14 for Sabrina Charles Pierre?
15   A.   I am.
16   Q.   Are you confident in your
17 estimate of 0.7 percent of the Latino vote
18 for Jacob Lefkowitz?
19   A.   I am.
20   Q.   How can you be confident in
21 those estimates if you can't say what
22 happened to the other 30 percent of the
23 Latino voters?
24   A.   Because the vote -- the analysis
25 for Lefkowitz was done independently of what

34 (Pages 130 - 133)

Page 134

1   Cole
2   Jones got.
3   Q.   Are you saying that you can get
4   reliable EI estimates for a two-way race
5   where you're not getting -- you wouldn't
6   have the percentages add up to a hundred
7   percent?
8   MR. GROSSMAN: Objection.
9   A.   I already explained that.
10   Q.   Well, I can understand how you
11 could get a little bit over a hundred
12 percent or a little below a hundred percent.
13 I don't understand how it could be reliable
14 to say that 64.2 percent of Latino voters
15 voted for one candidate, .7 percent of
16 Latino candidates voted for another
17 candidate; what happened to the rest of
18 them? Don't you want to know?
19   A.   I'd like to know, but there was
20 insufficient data for EI to produce an
21 estimate.
22   Q.   Did you calculate confidence
23 intervals for your estimates for the percent
24 of Latino voters voting for the candidates
25 in 2015?

Page 135

1   Cole
2   A.   We've already gone over whether
3   or not I generated confidence intervals.
4   Q.   So you did not generate
5   confidence intervals for your estimates for
6   the percent of Latino voters voting for
7   candidate in 2015, correct?
8   A.   I generated standard errors.
9   Q.   Right.
10   But not confidence intervals,
11 right?
12   A.   I did not produce confidence
13 intervals, that's right.
14   Q.   Let's move to the next column
15 over, sticking with the seat of Jacob
16 Lefkowitz, you generated an estimate that
17 36.2 percent of Black voters voted for Jacob
18 Lefkowitz, correct?
19   A.   Correct.
20   Q.   Are you confident in that
21 estimate?
22   A.   Yes.
23   Q.   And you generated an estimate
24 that 74.6 percent of Black voters voted for
25 Sabrina Charles Pierre, correct?

Page 136

1   Cole
2   A.   Correct.
3   Q.   Are you confident in that
4   estimate?
5   A.   I am.
6   Q.   You also generated an estimate
7   that 3.6 percent of Black voters voted for
8   Alan Keith Jones, right?
9   A.   Yes.
10   Q.   Are you confident in that
11 estimate?
12   A.   I am.
13   Q.   Why were you able to generate an
14 estimate among Black voters for Alan Keith
15 Jones, but not for Latino voters?
16   A.   Because there are more Black
17 voters than Latino voters.
18   Q.   When you say 3.6 percent of
19 Black voters for Alan Keith Jones, 3.6
20 percent of what number?
21   A.   Of Black voters.
22   Q.   Right.
23   What I mean is: Do you know how
24 many Black voters voted in the 2015
25 election?

Page 137

1   Cole
2   A.   I know how many Blacks of
3   citizen voting age population there are.
4   And that's what is used as the predictor.
5   Q.   So you don't actually know how
6   many Black voters voted in the 2015
7   election, right?
8   A.   Not actually how many voted.
9   Q.   Is there a way for you to
10 estimate how many Black voters actually
11 voted in this election?
12   A.   You could generate turnout
13 estimates to help you do that.
14   Q.   Did you generate turnout
15 estimates for the 2015 election?
16   A.   They have been generated, yes.
17   Q.   Who generated them?
18   A.   I did.
19   Q.   Do you report them in your
20 report?
21   A.   No.
22   Q.   Why not?
23   A.   We've gone through this same set
24 of questions this morning.
25   Q.   For the 2013 election, that's

35 (Pages 134 - 137)

Page 138

Cole

1
2   correct.
3   A.   The methodology is the same.
4   Q.   So is it fair to say that
5   everything you did methodologically for 2013
6   election, you also did for the 2015
7   election?
8   A.   Yes.
9   Q.   So for the 2015 election you did
10 not generate any confidence intervals,
11 correct?
12   A.   Correct.
13   Q.   You did not report any turnout
14 estimate for the 2015 election, correct?
15   A.   That's right.
16   Q.   But you have a turnout estimate
17 for the 2015 election?
18   A.   Yes.
19   Q.   Is the turnout estimate relevant
20 to your conclusions in your report?
21   A.   The main questions relate to
22 cohesion and crossover voting. Turnout
23 estimates were not a main focus of the
24 report. I was not the -- in general, my
25 conclusions would not change given turnout

Page 139

Cole

1
2   data.
3   Q.   Is your turnout estimates -- or
4   rather, are your turnout estimates relevant
5   to your conclusions in your report in any
6   way?
7   A.   My conclusions about racially
8   polarized voting were made without respect
9   to turnout estimates.
10   Q.   That's one of the conclusions in
11 your report. What about the others? Are
12 your turnout estimates relevant to any of
13 the conclusions in your report?
14   A.   There were three main questions.
15 The answer would be the same for all three;
16 racially polarized voting, Black cohesion,
17 Black and Latino cohesion and whether
18 candidates of choice of Blacks -- Blacks or
19 Blacks and Latinos are usually defeated by
20 White voters as a bloc.
21   Q.   Have you shared turnout analysis
22 and estimates with anyone?
23   A.   I don't think so.
24   Q.   Are you saying that turnout
25 estimates are irrelevant to your report?

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Cole

1
2   A.   Not necessarily irrelevant, but
3   they did not influence my conclusion.
4   Q.   Why did you generate a turnout
5   estimate?
6   A.   They're part -- they're standard
7   output from the King's EI program.
8   Q.   And you, I believe, testified
9   before, but just in case I missed it, and
10 you have retained that standard output from
11 the ecological inference?
12   A.   I have.
13   Q.   As you sit here today, do you
14 recall anything about that turnout estimate?
15   MR. GROSSMAN: Objection.
16   Q.   Meaning if I was to ask you your
17 best recollection of what the Black turnout
18 was in 2015, would you recall anything about
19 your turnout estimate?
20   A.   I don't recall the specific
21 estimates.
22   Q.   What do you recall?
23   A.   I recall that in general, in
24 general Whites turned out at higher rates
25 than Blacks and Latino. That's what I

Page 141

Cole

1
2   recall.
3   Q.   A lot higher?
4   A.   I don't recall.
5   Q.   Ballpark?
6   A.   No ballpark.
7   Q.   Was Black turnout low?
8   A.   I just answered that. I
9   remember that Whites tended to vote at a
10 higher rate, participated at a higher rate
11 than the other two racial categories.
12   MR. GROSSMAN: This is probably
13   a good time for a break. We have been
14   going for about an hour.
15   MR. LEVINE: For an hour?
16   MR. GROSSMAN: Yes.
17   MR. LEVINE: Yes, of course.
18   (Recess taken.)
19   Q.   We're looking at the 2015
20 elections. Before we turn back to that, let
21 me direct your attention to page 6 of your
22 report. Take a look at Footnote 9, and I'll
23 read it so everybody can follow along. I'm
24 starting after the citation. It reads, "A
25 Black preferred candidate in a head-to-head

36 (Pages 138 - 141)

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Cole

2 contest with two candidates is the candidate
3 who receives a majority of the Black votes.
4 Determination of Black preferred candidates
5 in head-to-head contests with more than two
6 candidates needs to be established on an
7 election-specific data basis, yet the level
8 of support for a candidate can change given
9 the total number of candidates; although
10 receiving a majority of Black votes in
11 contest with more than two candidates is not
12 required for determination as a Black
13 preferred candidate, receiving a majority of
14 Black votes would be an indication of
15 substantial support from Black voters."
16   What do you mean that "receiving
17 a majority of Black votes in contests with
18 more than two candidate is not required for
19 determination as a Black preferred
20 candidate"?
21   A.   I'll give you an example. Let's
22 say we have ten candidates and candidate --
23 the one with the highest vote got 40 percent
24 of the vote. Everybody else got five, four,
25 small amounts of percentage of votes.

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Cole

2   On a case-by-case basis, you
3 might conclude that the candidate with the
4 40 percent was the preferred candidate, not
5 necessarily requiring majority, if you've
6 got more than two candidates. That's what I
7 mean by that.
8   Q.   Do you have to change the way
9 you do an ecological inference analysis to
10 account for that possibility where you have
11 three-way elections?
12   A.   Each candidate is analyzed
13 separately.
14   Q.   So in the three-way elections in
15 2015, nothing about the way you performed
16 the ecological inference analysis changes?
17   A.   No.
18   Q.   Let's look at the seat of Yonah
19 Rothman, page 39, bottom of the page. For
20 the seat of Yonah Rothman, you estimated
21 that 0.5 percent of Latino voters voting for
22 the candidate -- only 0.5 percent of Latino
23 voters voted for Yonah Rothman, correct?
24   A.   Correct.
25   Q.   And you estimated that 99.4

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Cole

2 percent of Latino voters voted for Natasha
3 Morales, correct?
4   A.   Correct.
5   Q.   Are you confident in those
6 estimates?
7   A.   I am.
8   Q.   The next column you estimated
9 that 40 percent of Black voters voted for
10 Yonah Rothman, correct?
11   A.   Correct.
12   Q.   And you estimated that 59.9
13 percent of Black voters voted for Natasha
14 Morales, correct?
15   A.   Correct.
16   Q.   Looking at the White voter
17 column, you estimated that 72.1 percent of
18 White voters voted for Yonah Rothman,
19 correct?
20   A.   Correct.
21   Q.   And you estimated that 28.1
22 percent of White voters voted for Natasha
23 Morales, correct?
24   A.   Correct.
25   Q.   Are you confident in those

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Cole

2 estimates?
3   A.   I am.
4   Q.   Because these are point
5 estimates, is it possible that the actual
6 support of Black voters for Yonah Rothman
7 could have been higher than 40 percent?
8   A.   It's possible.
9   Q.   Is it possible that the actual
10 support of Black voters for Natasha Morales
11 could have been lower than 59.9 percent?
12   A.   It's possible.
13   Q.   How likely is it?
14   A.   Given the standard errors that
15 were generated with these analyses, I found
16 it to be not likely.
17   Q.   Let's look at the seat of Eliahu
18 Solomon, the next one. Here we have another
19 three-way race. You calculated that the
20 percentage of Latino voters voting for
21 candidate Juan Pablo Ramirez was 0.3
22 percent; is that correct?
23   A.   Correct.
24   Q.   Are you confident in that
25 estimate?

37 (Pages 142 - 145)

Page 146

Cole

1
2   A.   I am.
3   Q.   You estimated that 99.4 percent
4 of Latino voters voted for Steve White,
5 correct?
6   A.   Correct.
7   Q.   Are you confident in that
8 estimate?
9   A.   I am.
10   Q.   And you have a candidate named
11 Yisroel Eisenbach for whom the Latino voter
12 support is indeterminate. Is that for the
13 same reason that you determined the Alan
14 Keith Jones Latino support was
15 indeterminate?
16   A.   Yes.
17   Q.   Does that indeterminate estimate
18 in any way affect the reliability of your
19 estimates for the other two candidates?
20   A.   No.
21   Q.   Does it strike you as
22 interesting that no or virtually no Latino
23 voters voted for Juan Pablo Ramirez and all
24 or nearly all Latino voters voted for Steve
25 White?

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Cole

1
2   A.   White was the candidate of
3 choice in the Latinos. It does not
4 necessarily have to be the same race as the
5 voters.
6   Q.   Do you consider the race of the
7 candidate at all as a factor in your
8 conclusion when you determine whether or not
9 there is racial polarization?
10   A.   I tend to find the interracial
11 contest to be more probative than a race
12 that is not interracial. It gives the
13 voters a choice, a racial choice.
14   Q.   What do you mean by that, by "a
15 racial choice"?
16   A.   Meaning that a contest between
17 two Blacks and two Whites would not have a
18 racial choice; whereas, a contest between a
19 Black and White candidate, there is a racial
20 choice.
21   Q.   In an interracial contest, are
22 you saying a White candidate receiving
23 support of White voters and a Black
24 candidate receiving the support of Black
25 voters would be indicative of racial

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Cole

1
2 polarization?
3   A.   The racial polarization would
4 still be whatever the preferred candidate is
5 of the particular racial group. I'm just
6 saying that in the situation where there are
7 multiple races, you have a different dynamic
8 than you would if there weren't multiple
9 races as the candidates.
10   Q.   In the 2015 elections, looking
11 at the White voter column, you estimated
12 that 68 percent of White voters voted for
13 Juan Pablo Ramirez, correct?
14   A.   Correct.
15   Q.   Are you confident in that
16 estimate?
17   A.   I am.
18   Q.   And 25.2 percent of White voters
19 voted for Steve White; are you confident in
20 that estimate?
21   A.   Yes.
22   Q.   And 6 percent of White voters
23 voted for Yisroel Eisenbach; are you
24 confident in that estimate?
25   A.   I am.

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Cole

1
2   Q.   Is it still relevant to your
3 analysis, because it's an interracial
4 contest, even if a majority of White voters
5 supported the Latino candidate and a
6 majority of Latino voters supported the
7 White candidate?
8   A.   It's still racially polarized
9 voting. The preferred candidate of --
10 regardless of the race of the candidate, the
11 preferred candidate of Latinos and Blacks
12 lost.
13   The cases -- the data that were
14 decided in Gingles were all cross-racial
15 cases. Over time analysts began also
16 analyzing White-White contests. So as I
17 said in the report, the preference for
18 elections to rely upon would be recent
19 indigenous contests that are interracial,
20 but the White-White can also inform about
21 racially polarized voting and Black-Black
22 and so on.
23   Q.   Right.
24   So if interracial races are more
25 probative because they provide voters of

38 (Pages 146 - 149)

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Cole

1
2   more racial choice, as you say, isn't it
3   probative when you have a race where White
4   voters overwhelming vote for a Latino
5   candidate and Latino voters overwhelming
6   vote for a White candidate?
7   A.   I mean, it's an interesting
8   finding.
9   Q.   Have you ever seen that in an
10 election before?
11   A.   I've seen situations where White
12 preferred -- this similar pattern, yes.
13   Q.   Even though voters are voting
14 for a candidate who is not of their own race
15 instead of voters voting for a candidate who
16 is of their own race, even though it's a
17 reversal, your opinion is that this race is
18 still indicative of racial polarization?
19   A.   Yes.
20   Q.   If that's right, why would
21 interracial contests be more probative than
22 same race contests?
23   A.   In a contest involving just
24 Whites, for example, the whole outcome is --
25 you know, is mitigated by the fact that

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Cole

1
2   there is no racial choice. It's just a
3   different dynamic.
4   Q.   But here there is a racial
5   choice, right?
6   A.   The point is is that it's the
7   candidate of choice of the voters. That's
8   the real outcome you're looking at.
9   Q.   That's interesting. Because
10 then that suggests that the candidate of
11 choice of the Latino voters is the candidate
12 of choice, not because of the race of the
13 candidate, but because of something else,
14 right?
15   A.   It would indicate that they
16 are -- sure. Probably other factors, of
17 course.
18   Q.   Let's take a look at 2016, the
19 top of the same page, page 39. The seat of
20 Bernard Charles, you calculated that the
21 percentage of Latino voters voting for
22 candidate Bernard Charles was 1.2 percent,
23 correct?
24   A.   Correct.
25   Q.   And you calculated the percent

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Cole

1
2   of Latino voters who voted for Kim Foskew
3   was 99.1 percent, correct?
4   A.   Correct.
5   Q.   And you calculated in the next
6   column that the percentage of Black voters
7   who voted for Bernard Charles was 1.4
8   percent, correct?
9   A.   Correct.
10   Q.   And you calculated that the
11 percentage of Black voters who voted for Kim
12 Foskew was 99.6 percent, correct?
13   A.   Correct.
14   Q.   Are you confident in all of
15 those estimates?
16   A.   I am.
17   Q.   You also calculated that the
18 percentage of White voters who supported
19 Bernard Charles was 77.2 percent, correct?
20   A.   Correct.
21   Q.   And that 23 percent of White
22 voters supported Kim Foskew, correct?
23   A.   Correct.
24   Q.   Bernard Charles is a Black man,
25 correct?

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Cole

1
2   A.   Correct.
3   Q.   And Kim Foskew is a White women,
4   correct?
5   A.   Yes, yes.
6   Q.   We have the same pattern, don't
7   we, where you have majority of White voters
8   who voted for a Black candidate and a
9   majority of Black voters who voted for a
10 White candidate, right?
11   A.   Right.
12   Q.   And like we just discussed, does
13 that suggest to you that if Kim Foskew is
14 the candidate of choice for Black voters,
15 it's not because of her race?
16   A.   We don't know the reason. This
17 is just the result. I don't know if it has
18 to do with the race of the candidate. We
19 just know that Kim Foskew is the candidate
20 of choice of Blacks and Latinos. Don't know
21 the reason for it.
22   Q.   And you know that Bernard
23 Charles was the candidate of choice for
24 White voters, correct?
25   A.   Correct.

39 (Pages 150 - 153)

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Cole

2 Q. So let's go down to the next
3 election for the seat of Pierre Germain.
4 You calculated that 77 percent of White
5 voters voted for Pierre Germain, right?
6 A. Right.
7 Q. Are you confident in that
8 result?
9 A. I am.
10 Q. And 23 percent of White voters
11 voted for Jean Fields, right?
12 A. Right.
13 Q. And Pierre Germain is a Black
14 man also, correct?
15 A. Yes.
16 Q. And Jean Fields is a Black
17 woman, right?
18 A. Right.
19 Q. So that suggests that 77.2
20 percent of Whites voted for Bernard Charles,
21 also 77 percent of Whites voted for Pierre
22 Germain; so that is a consistent amount of
23 White support for two Black candidates
24 correct?
25 A. That's correct. Your analysis

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Cole

2 excludes the fact that there were two Black
3 candidates --
4 Q. Right.
5 A. -- for the seat of Pierre
6 Germain, so Whites had to vote for a Black
7 candidate.
8 Q. That's a useful point, because
9 23 percent of Whites, according your
10 estimates, voted for Kim Foskew, right?
11 A. Right.
12 Q. 23 percent of White voters voted
13 for Jean Fields, right?
14 A. Right.
15 Q. So even when presented with a
16 racial choice, as you put it, the same
17 percentages of White voters voted the same
18 way as between candidates, right?
19 A. Right. And Foskew and Fields
20 and Morales are all -- they all ran together
21 on the same slate, public school slate.
22 Q. Look at the seat of Yehuda
23 Weissmandl, 78 percent of White voters
24 supported Yehuda Weissmandl, right?
25 A. Right.

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Cole

2 Q. And 24 percent of White voters
3 supporter Natasha Morales, right?
4 A. Right.
5 Q. And Yehuda Weissmandl is White?
6 A. Right.
7 Q. So as between the support for
8 Bernard Charles, Pierre Germain and Yehuda
9 Weissmandl, it's about the same, between 77
10 and 78 percent of White voters, correct?
11 A. Correct.
12 Q. And there is no variation
13 according to the race of the candidate, is
14 there?
15 A. That's correct.
16 Q. And that's true for their
17 opponents because in each of those
18 elections, the first your opponent was White
19 woman, the second your opponent was a Black
20 woman, and the third the opponent was a
21 Latino woman, and the amount of White
22 support remained the same across all three
23 of those candidates, true, correct?
24 A. Correct.
25 Q. Doesn't that suggest that if

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Cole

2 Yehuda Weissmandl is the preferred candidate
3 of White voters, it's not because of his
4 race?
5 A. These results to me suggest that
6 the three candidates that ran, who were
7 supported by private school interests, were
8 supported regardless of their race.
9 Q. Great.
10 And the three candidates who
11 ran, to use your term, with the support of
12 the public school community lost without
13 regard to their race, right?
14 A. That's correct.
15 Q. Let's take a look at 2017. For
16 the 2017 election, for the sake of
17 completeness, as you testified before, you
18 did the same thing methodologically for the
19 2017 election that you did for all the
20 previous, correct?
21 A. That's correct.
22 Q. And for the 2017 election you
23 did not generate confidence intervals,
24 correct?
25 A. Correct.

40 (Pages 154 - 157)

Page 158

1   Cole
2   Q.   And for the 2017 election you
3 did generate turnout estimates, but did not
4 report them, correct?
5   A.   Correct.
6   MR. LEVINE: I'm going to mark
7 as Cole Exhibit 4 this document.
8   (Cole Exhibit 4, Annual Budget
9 and Trustee Vote for May 16, 2017
10 Official Results, marked for
11 identification, as of this date.)
12   Q.   The exhibit you've just been
13 handed marked Cole 4 is a copy of the Annual
14 Budget and Trustee Vote for May 16, 2017
15 Official Results.
16   Have you seen this one before?
17   A.   Yes.
18   Q.   I think you know what I'm about
19 to ask you, which has to with the far column
20 on your table for the votes?
21   A.   Right.
22   Q.   And the official results, the
23 vote counts in the bottom row, do you see
24 those?
25   A.   I do.

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1   Cole
2   Q.   They don't match up?
3   A.   That's correct.
4   Q.   Is that a typo?
5   A.   They are typos. When I first
6 got the 2017 data, I got unofficial results.
7 My analyses were run on official results,
8 and so that's why these numbers don't match.
9 These are the unofficial totals. But the
10 analyses were run on the official totals.
11   Q.   So I'm clear, the analyses that
12 you ran to generate your EI estimates of
13 racial support for the candidates, you used
14 the official results?
15   A.   That's correct.
16   Q.   And the report just lists the
17 vote totals in error, that is just a typo
18 drawn from the unofficial results?
19   A.   That's correct.
20   Q.   So we can disregard that column
21 and there is no reason to believe that that
22 resulted in any error in your estimate?
23   A.   That's right.
24   Q.   Very good.
25   I think we can maybe short track

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1   Cole
2 this election because of the work we've done
3 so far.
4   Are you confident in your EI
5 estimates for each of the estimates that you
6 generated for the 2017 election?
7   A.   I am.
8   Q.   And you did not consider any
9 supplemental evidence or other quantitative
10 analysis that caused you to question the
11 results that you got for the 2017 election?
12   MR. GROSSMAN: Objection.
13   Q.   Is that right?
14   A.   Could you repeat the question?
15   Q.   Yes.
16   So none of the supplemental
17 evidence or other quantitative analysis that
18 you performed caused you to question your
19 results for the 2017 election, right?
20   A.   Yes, the results were all
21 consistent.
22   Q.   Looking at the first row, you
23 estimated that 36.5 percent of Black voters
24 voted for Mark Berkowitz and 68.8 percent of
25 Black voters voted for Alexandra Manigo,

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1   Cole
2 right?
3   A.   Right.
4   Q.   And for the seat of Harry
5 Grossman below, you estimated that 7.6
6 percent of Black voters voted for Harry
7 Grossman and 94.2 percent of Black voters
8 voted for Eric Goodwin, right?
9   A.   Right.
10   Q.   Did it strike you as anomalous
11 Mark Berkowitz appeared to do significantly
12 better with the Black vote than Harry
13 Grossman?
14   A.   With the seat of Harry Grossman
15 you have a relatively high percentage of
16 Black voters supporting a Black candidate.
17 In a contest that is amongst Whites, a
18 smaller percentage of Black voters supported
19 Alexandra Manigo, a White, but still
20 cohesive. It was more cohesive when there
21 was a Black running.
22   Q.   Do you understand Eric Goodwin
23 to be running on a slate endorsed by what
24 you've characterized as the public school
25 community?

41 (Pages 158 - 161)

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Cole

1   Cole
2   A.   Yes.
3   Q.   Do you understand Alexandra
4   Manigo to be running to have been running on
5   the same slate Eric Goodwin?
6   A.   Yes.
7   Q.   Why do you think they received
8   such disparate levels of support despite
9   running on the same slate?
10   A.   First of all, both percentages
11   indicate cohesion and indicative of
12   polarized voting. This would just be an
13   example where -- potentially a contest where
14   there is no Black running, was not related
15   to the severe kind of polarization that we
16   saw with the seats of Grossman and
17   Engel/Chajmovicz.
18   Q.   Is there something different
19   about Mark Berkowitz?
20   A.   What do you mean by that?
21   Q.   Well, for example, for the seat
22   of Engle you have 99.4 percent of Black
23   voters supporting Chevon Dos Reis, who is a
24   Latino woman, and 3.4 percent of Black
25   voters supporting Joe Freilich. That is

Page 163

1   Cole
2   also a very different vote breakdown as
3   between Mark Berkowitz and Alexandra Manigo
4   despite the fact that all three are slate
5   candidates, right?
6   A.   Right.
7   Q.   So I'm just wondering if that
8   strikes you as anomalous?
9   A.   His pattern was -- yes, it was
10   somewhat different, let's say, than 2016 and
11   one possibility is that not being an
12   interracial contest may have made a
13   difference.
14   Q.   So there is some element of
15   support for these candidates that is not
16   necessarily tied to the slate that they're
17   running on, but may be related to other
18   factors; is that about right?
19   A.   It's possible. It's possible.
20   Q.   Are you as confident in these
21   results as you were in all of the prior
22   ones?
23   A.   Yes.
24   Q.   And so looking back over the
25   report, is the only set of EI estimates that

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1   Cole
2   you generated in which you are not confident
3   the percentage of Black voters who voted for
4   the candidates in May 21, 2013 election?
5   A.   It sounds right.
6   MR. LEVINE: Why don't we take a
7   five-minute break and see if there is
8   anything left to do.
9   MR. GROSSMAN: Okay.
10   MR. LEVINE: Sound good?
11   MR. GROSSMAN: Sounds good.
12   (Recess taken.)
13   Q.   Let's go back on the record. I
14   only have a few more questions. Thank you
15   very much for your patience so far.
16   I still have a question that I'm
17   not clear of in terms of what you're calling
18   the "correlation analysis." If you could
19   turn to your report, which is the document
20   we marked as Exhibit 2, to page 8, paragraph
21   22, the very bottom of the page, that
22   paragraph actually extends over on to the
23   page 9, and at the top of the page, and in
24   the penultimate sentence of that paragraph,
25   you list the three methods of analysis that

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1   Cole
2   you used, right?
3   A.   Yes.
4   Q.   In the third method of analysis
5   you identify as Goodman single-equation
6   ecological regression, right?
7   A.   Right.
8   Q.   Did you do a Goodman
9   single-equation ecological regression
10   analysis?
11   A.   What I should have said there to
12   generate more clarity is "that correlation
13   analysis from a Goodman single-equation
14   analysis." The same variables were used in
15   both.
16   Q.   I apologize. You have not
17   generated more clarity yet, but maybe we
18   will get there.
19   What do you mean by that?
20   A.   I mean that in generating a
21   correlation, we're looking a the association
22   between two variables. In this case the
23   racial composition of a precinct and the
24   vote share for a candidate. Correlation
25   looks at the association between the two.

42 (Pages 162 - 165)

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1   Cole
2   There is no prediction involved. It is an
3   association.
4   Q.   How is that different from
5   Goodman single-equation ecological
6   regression?
7   A.   The formula is different. The
8   formula for correlation is the covariance
9   divided by the product that the -- the
10   standard deviations of the two variables.
11   That's one formula.
12   The regression, which also uses
13   the same two variables, but looks to predict
14   how much vote share based on race using a
15   least squares approach, but the basic
16   formula is Y equals Ax plus B. A formula,
17   an equation, Y equals Ax plus B.
18   Q.   So is this list in your report,
19   where you list Goodman single-equation
20   ecological regression, is that inaccurate?
21   A.   It's not inaccurate. To be
22   clearer, I should have said, "correlation
23   from." It's a correlation from the Goodman
24   approach.
25   Q.   Are the problems identified in

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1   Cole
2   the Grofman article that we discussed of
3   using CVAP as your independent variable and
4   having multiple racial categories equally
5   applicable to the analysis that you did
6   using Goodman single-equation ecological
7   regression?
8   A.   Those critiques have to do with
9   generating racial bloc voting estimates from
10   a single equation. And at that point in
11   time they were developing bivariate
12   ecological regression, BERA, B-E-R-A, which
13   in terms of the regression was an advance
14   over just using the single regression.
15   That's separate from what I did.
16   Q.   Why didn't you do the Goodman
17   single-equation ecological regression that
18   projects racial polarization?
19   A.   I didn't use the Goodman
20   single-equation because research has shown
21   when you compare those estimates to known
22   individual level data, let's say from
23   well-designed exit poll studies, that the EI
24   estimates are more correct than the single
25   regression estimates.

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1   Cole
2   MR. LEVINE: I have no further
3   questions.
4   MS. CONNELL: I have no
5   questions.
6   MR. GROSSMAN: I do have some
7   questions.
8   EXAMINATION BY
9   MR. GROSSMAN:
10   Q.   Good afternoon, Dr. Cole.
11   A.   Good afternoon.
12   Q.   Counsel asked you earlier to
13   define what you meant by a Preliminary
14   Expert Report. When you issued your opinion
15   in this report, had you received any
16   discovery from the district or the
17   commissioner?
18   A.   The only discovery from the
19   district is what I got from their website in
20   terms of data.
21   Q.   To the best of your knowledge,
22   the defendants in this case have not yet
23   produced any documents that would have
24   allowed you to further inform your analysis?
25   A.   No.

Page 169

1   Cole
2   Q.   Is it possible that further data
3   and information could further inform your
4   analysis?
5   A.   Yes.
6   Q.   You testified before about
7   receiving data from Steve White. You
8   reviewed the accuracy of the data you
9   received from Mr. White?
10   A.   I did.
11   Q.   Do you know if anyone else
12   reviewed the accuracy of the data received
13   from Mr. White?
14   A.   Yes.
15   Q.   Who else?
16   A.   Bill Cooper.
17   Q.   Did you find any errors in the
18   data?
19   A.   No.
20   Q.   You testified before that you
21   received election data in this case from
22   websites. Do you recall which website
23   contained the election data that you
24   referred to earlier?
25   A.   It's the main East Ramapo

43 (Pages 166 - 169)

Page 170

1   Cole
2   Central School District data -- website.
3   Q.   You testified earlier that you
4   were retained as an expert in February of
5   2017. Can you clarify whether you were
6   retained as a consulting expert or a
7   testifying expert at that time?
8   A.   I was consulting at that time.
9   I had not agreed or had an arrangement to
10 testify at that point.
11   Q.   Do you recall approximately when
12 you were retained as a testifying expert in
13 this case?
14   A.   This is going to be a
15 guesstimate. Maybe May or June, or
16 something like that, of 2017.
17   Q.   How many methods of quantitative
18 analysis are reflected in your report?
19   A.   Three.
20   Q.   Are all three of these methods
21 peer-reviewed?
22   A.   Yes.
23   Q.   Are all of your analyses
24 replicable?
25   A.   Yes.

Page 171

1   Cole
2   Q.   And you retained all the data
3   necessary to replicate all of your analyses?
4   A.   Yes.
5   Q.   Did you testify earlier that the
6   EzI output generates standard error?
7   A.   Yes.
8   Q.   You've reported ecological
9   inference estimates in approximately a dozen
10 cases; is that accurate?
11   A.   That sounds about right, yes.
12   Q.   Do you always report the
13 standard errors?
14   A.   No.
15   Q.   Do you typically report the
16 standard errors?
17   A.   No.
18   Q.   Did you testify that the EzI
19 program also generates estimates of turnout
20 by race in its output?
21   A.   Yes.
22   Q.   The dozen or so cases in which
23 you have produced reports using the
24 ecological inference, do you always report
25 those turnout outputs?

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1   Cole
2   A.   No.
3   Q.   Do you typically report those
4   turnout outputs?
5   A.   No.
6   Q.   Have you ever been disqualified
7   as an expert as a result of the Daubert
8   motion?
9   A.   No.
10   Q.   You testified that you testified
11 as an expert in approximately 30 voting
12 rights cases overall; is that correct?
13   A.   Sounds right -- oh, let me take
14 that back.
15   Q.   Let me actually rephrase the
16 question.
17   You testified that you have been
18 retained as an expert in approximately 30
19 voting rights cases; is that correct?
20   A.   That's correct.
21   Q.   Thank you.
22   You were asked about your
23 confidence in your EI estimates. Is it your
24 testimony that you performed those EI
25 calculations correctly?

Page 173

1   Cole
2   A.   Yes.
3   Q.   Is your level of confidence in
4   your EI estimates reflective in any way of
5   whether you performed your EI estimates
6   correctly?
7   A.   Yes.
8   Q.   You analyzed 12 contested
9   elections; is that correct -- strike that.
10   You analyzed 12 contested
11 elections for the board; is that correct?
12   A.   That's correct.
13   Q.   In 2015 did the EI conflict with
14 the correlation analysis in any of the
15 contests?
16   A.   No.
17   Q.   In 2016 did EI conflict with the
18 correlation analysis in any of the contests?
19   A.   No.
20   Q.   In 2017 did the EI conflict with
21 the correlation analysis in any of the
22 contests?
23   A.   No.
24   Q.   Counsel asked you before about
25 confidence intervals. What is the relation

44 (Pages 170 - 173)

Page 174

1   Cole
2   between standard error and confidence
3   intervals?
4   A.   You used the standard error --
5   you can use the standard error to generate
6   confidence intervals.
7   Q.   So a standard error would allow
8   you to understand -- strike that.
9   A standard error would allow
10   anyone to understand that your EI analysis
11   was conducted reliably and correctly; is
12   that an accurate statement?
13   MR. LEVINE: Objection.
14   Q.   Let me rephrase.
15   Does standard error reflect on
16   the reliability of the calculation -- strike
17   that one more time.
18   Does standard error reflect on
19   the reliability of an analysis?
20   MR. LEVINE: Objection.
21   A.   I'm going to ask what you mean
22   by "reliability."
23   Q.   That's an excellent question.
24   What does standard error tell us
25   about or tell you about whether you've

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1   Cole
2   performed ecological inference analysis
3   accurately -- strike that. I'll leave that
4   alone.
5   Does your review of the standard
6   error -- strike that. Is the turnout for --
7   strike that.
8   How does your analysis of the
9   2012 U.S. presidential election affect your
10   confidence in your analysis of racially
11   polarized voting in contests for election of
12   the East Ramapo Central School District
13   Board of Education?
14   A.   I analyzed the presidential
15   contest in order to expand the number of
16   voters involved in an interracial electoral
17   contest, and the results were supportive of
18   racially polarized voting in the school --
19   amongst school district voters.
20   Q.   Turn to Table 2 on page 38 of
21   your report. Look at the election
22   between -- I am sorry, the contest between
23   Mark Berkowitz and Alexandra Manigo. What
24   is the margin of victory -- strike that.
25   In the contest between Mark

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1   Cole
2   Berkowitz and Alexandra Manigo, by what
3   margin does Ms. Manigo receive a higher
4   percentage of Black votes than
5   Mr. Berkowitz?
6   A.   Approximately 32 percent.
7   Q.   If a candidate won an election
8   by 32 percent, how would you characterize a
9   victory of that magnitude?
10   A.   It would be of landslide
11   proportions.
12   Q.   I would like you to turn your
13   attention to HPA in this table. In each of
14   these three elections how would you
15   characterize the margin of victory among
16   White voters for Mr. Berkowitz, Mr. Grossman
17   and Mr. Freilich?
18   A.   Well, there are similar
19   estimates and they're indicative of very
20   high cohesion?
21   Q.   According to the HPA analysis,
22   the White preferred candidate won every
23   contested election that you analyzed?
24   A.   That's correct.
25   Q.   You used multiple -- you

Page 177

1   Cole
2   testified before that you used three
3   separate measures of racially polarized
4   voting analyses; is that correct?
5   A.   That's correct.
6   Q.   Where those quantitative
7   measures conflict, is supplemental evidence
8   valuable to resolve the tension?
9   MR. LEVINE: Objection.
10   A.   They were helpful.
11   Q.   I would like to turn your
12   attention to paragraph 64 on page 28 of your
13   report -- strike that.
14   Turn to paragraph 67 of your
15   report, page 31.
16   A.   I'm with you.
17   Q.   What does this data tell you
18   about the composition of the public school
19   student body and the private school student
20   body?
21   MR. LEVINE: Objection.
22   A.   As I said earlier, these NYSED
23   data indicated that the population at public
24   schools is virtually almost all non-White
25   and private school population is close to

45 (Pages 174 - 177)

Page 178

Cole

1
2   100 percent White.
3   Q.   Given the racial composition of
4   the schools, do you think it's more or less
5   likely that a slate that is preferred by
6   advocates of investment in public schooling
7   would be preferred by minority voters?
8   MR. LEVINE: Objection.
9   A.   I would.
10   Q.   Let's try the question one more
11   time.
12   A.   Yes.
13   Q.   Based on your understanding of
14   the racial composition of the schools, how
15   does that affect your understanding of how
16   an organization that advocates for greater
17   investment in the public schools would
18   receive support from -- strike that.
19   Turning your attention to
20   paragraph 65, you were asked about an Op Ed
21   written by Ms. Hatton; is that correct?
22   A.   Yes.
23   Q.   The Op Ed received a response
24   from Yehuda Weissmandl, President of East
25   Ramapo Central School District Board of

Page 179

Cole

1
2   Education; is that correct?
3   A.   That's correct.
4   Q.   Does the fact that
5   Mr. Weissmandl responded to Ms. Hatton's
6   Op Ed lend credibility to her piece?
7   MR. LEVINE: Objection.
8   Q.   In your mind?
9   MR. LEVINE: Objection.
10   A.   It would lead me to believe that
11   he felt the need to respond to it would
12   indicate her letter was of some importance.
13   Q.   Do you recall if
14   Mr. Weissmandl's Op Ed contradicted any of
15   the points Ms. Hatton made about whether
16   Mr. Charles, Mr. Germain and
17   Mr. Corado (sic) skipped the NAACP forum?
18   A.   No.
19   Q.   Do you recall whether
20   Mr. Weissmandl's Op Ed contradicted
21   Ms. Hatton's point that the public school
22   community was suspicious of Charles, Germain
23   and Corado because they refused to return
24   calls to the press and made implausible
25   promises to restore almost every program cut

Page 180

Cole

1
2   over the past five years without any
3   specific plans?
4   A.   No.
5   Q.   Have you used EI analysis in
6   other reports where you've testified as an
7   expert in which there were multiple, more
8   than two racial groups in the community --
9   strike that.
10   Did you use correlation analysis
11   in reports where there were more than two
12   racial groups in a community?
13   A.   Yes.
14   Q.   Those reports were not excluded
15   as the result of Daubert challenges; is that
16   correct?
17   A.   Correct.
18   Q.   What does the term "statistical
19   significance" mean?
20   A.   You establish a level of
21   statistical significance, it allows you to
22   state that your result is not happening by
23   chance alone at a particular level.
24   Q.   Are there social science
25   analyses that you're aware of that use a

Page 181

Cole

1
2   statistical significance level of p value of
3   .2?
4   MR. LEVINE: Objection.
5   A.   Yes.
6   Q.   What analysis?
7   A.   In the area of Medicare/Medicaid
8   fraud audits. I should say, alleged fraud
9   audits.
10   Q.   It's your understanding that
11   when those audits are conducted and yield
12   results of a p value of .2, what does that
13   indicate?
14   A.   When demands are made for
15   repayment, a lower level of confidence
16   interval is used.
17   Q.   So is there still some value to
18   results that report a p value of .2?
19   A.   Yes. Oh, yes.
20   Q.   You testified earlier that you
21   did not perform any analysis of racially
22   polarized voting on the 2014 election?
23   A.   Yes.
24   Q.   Did you review supplemental
25   evidence regarding the 2014 election?

46 (Pages 178 - 181)

Page 182

Cole

1
2   A.   I did.
3   Q.   Is that evidence of racially
4 polarized voting?
5   A.   I believe the take-home story
6 from that supplemental evidence was that
7 residents that typically support a public
8 school slate felt that running candidates
9 would be futile.
10   Q.   Did that inform your analysis of
11 racially polarized voting?
12   A.   Yes.
13   Q.   Earlier you mentioned a
14 representative sample of supplemental data.
15 What did you mean by the term
16 "representative sample"?
17   A.   Relied upon a sample that was
18 representative of the sites that were
19 systematically generated.
20   Q.   Looking at the 2013 election,
21 Table 2, page 40, what does the HPA indicate
22 in terms of White support for the winning
23 candidates Corado, Germain and Charles?
24   A.   Consistent across all three
25 candidates at very high levels of cohesion.

Page 183

Cole

1
2   Q.   Corado, Germain and Charles each
3 won the White vote by a margin of
4 approximately 70 points; is that accurate?
5   A.   In those homogenous precincts,
6 yes.
7   Q.   The vote totals, looking at the
8 vote totals, do those elections reflect such
9 as wide margin?
10   MR. LEVINE: Objection.
11   MR. GROSSMAN: Let me rephrase.
12   Q.   What is the approximate margin
13 of victory in terms of total votes for
14 candidates Corado, Germain and Charles?
15   A.   Approximately 1700, 16 to 17
16 hundred votes.
17   Q.   Do the HPA analysis and margin
18 of victory in terms of total votes inform
19 your confidence in whether the EI -- strike
20 that.
21   Does the HPA and the margin of
22 victory in terms of total votes affect your
23 confidence in whether MaraLuz Corado, Pierre
24 Germain and Bernard Charles actually won
25 73.9, 91.8 and 89.7 percent of the Black

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Cole

1
2 vote respectively?
3   MR. LEVINE: Objection.
4   A.   It would lead me to believe
5 there is an inconsistency there.
6   MR. GROSSMAN: I have nothing
7   further.
8   MR. LEVINE: I have a few
9   questions.
10 EXAMINATION (CONT'D)
11 BY MR. LEVINE:
12   Q.   I have a few more redirect
13 questions.
14   When I asked you before if you
15 had all of the data that you required to
16 perform your ecological inference analysis,
17 you answered yes.
18   How could obtaining discovery of
19 the district influence your ecological
20 inference analysis?
21   A.   I'm not so sure it influenced
22 the EI analysis. It might have some bearing
23 on the supplemental data that I collected.
24   Q.   As you sit here today, can you
25 think of any evidence that you might receive

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Cole

1
2 that would somehow change your opinions?
3   A.   Not at this time.
4   Q.   Take a look at your report and
5 turn to the last page Table 4a, page 45.
6 You were asked whether based upon your
7 analysis the White preferred voter -- sorry,
8 the White preferred candidate had won every
9 single election that you analyzed and you
10 answered yes, but that's not true, is it,
11 because in your analysis of the 2012
12 presidential election the Black preferred
13 candidate won and the White preferred
14 candidate lost at least for this
15 jurisdiction, right?
16   A.   I was answering with respect to
17 the district contests.
18   Q.   All right.
19   So the question asked you -- I
20 know because I paid very close attention.
21 The question asked you whether the White
22 preferred candidate won every election that
23 you analyzed and so the answer to that
24 question is no, right?
25   A.   That's correct.

47 (Pages 182 - 185)

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1   Cole
2   Q.   Right. Because the 2012
3   election, the Black preferred candidate won
4   and the White preferred candidate lost,
5   right?
6   A.   That's correct.
7   Q.   For this 2012 presidential
8   election you be analyzed only election
9   districts that were totally within the East
10   Ramapo school boundaries, correct?
11   A.   Correct.
12   Q.   The vote totals reflected in
13   your table are significantly greater than
14   the vote totals in school board elections,
15   right?
16   A.   Right.
17   Q.   Does that suggest that the
18   turnout for this presidential election is
19   significantly greater than it would be for
20   school board elections?
21   A.   It certainly is greater.
22   Q.   Did you perform a turnout
23   estimate or generate a turnout estimate for
24   this presidential election?
25   A.   Turnout estimates were

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1   Cole
2   generated.
3   Q.   Were they retained?
4   A.   Yes.
5   Q.   Did you generate a confidence
6   interval for your estimates for this
7   election?
8   A.   No.
9   Q.   Are exogenous elections as
10   probative as endogenous elections?
11   A.   Usually not.
12   Q.   Is this presidential election
13   particularly probative for some reason?
14   A.   It's probative because it
15   indicates high levels of racially polarized
16   voting with a larger electorate than the
17   district contests.
18   Q.   Doesn't it indicate that with
19   higher levels of turnout Black preferred
20   candidates can win even without White voter
21   support in these East Ramapo districts?
22   A.   Well, in this contest with this
23   level of voter participation and the turnout
24   levels -- I mean, and the cohesion levels,
25   the Black preferred candidate was able to

Page 188

1   Cole
2   win.
3   Q.   Look at page 13 of your report,
4   you concluded in paragraph 75 that --
5   MR. GROSSMAN: Wrong page.
6   Q.   Page 33, paragraph 75, you
7   concluded "as with the 2015, 2016 and 2017
8   board elections, for East Ramapo voters in
9   the 2012 U.S. president election was
10   racially polarized with a coalition of Black
11   and Latino voters coalescing around Obama
12   and White voters supporting Romney."
13   Why is that relevant to your
14   conclusions with respect to the East Ramapo
15   Central School District elections?
16   A.   It's an indication of highly
17   racially polarized voting.
18   Q.   You were asked if your analysis
19   performed in your report was replicable.
20   You answered yes. You were asked if the
21   data was retained and you said yes.
22   Are you able to collect and
23   produce all of the data necessary for
24   someone to replicate your analysis?
25   A.   Yes.

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1   Cole
2   Q.   Have you been asked to do that
3   yet?
4   MR. GROSSMAN: You can answer.
5   A.   Not specifically. I've been
6   asked if I have the data to be able to do
7   that.
8   Q.   You were asked whether in the
9   past you have reported on the standard error
10   generated as part of generating your
11   estimates. You answered that you don't
12   typically report the standard error.
13   Have you ever reported in other
14   prior cases your confidence intervals for
15   your estimates?
16   A.   No.
17   Q.   You've never reported your
18   confidence intervals in any report that
19   you've ever filed in the court?
20   A.   In a voting rights case, that's
21   correct.
22   Q.   You were asked about the 2013
23   election and specifically you were asked
24   whether the EI analysis that you performed
25   conflicted with the correlation analysis and

48 (Pages 186 - 189)

Page 190

1   Cole
2   I just didn't understand the question and so
3   I didn't understand your answer.
4   How could the EI analysis and
5   the correlation analysis conflict; don't
6   they measure different things?
7   A.   I believe I answered it using a
8   different word than "conflict."
9   Q.   Right.
10   Was that intentional?
11   A.   Yes.
12   Q.   Okay. So what is the better --
13   what is the better way to describe that?
14   A.   I'd say, not consistent,
15   something like that.
16   Q.   So I had asked you earlier
17   whether it's possible for your correlation
18   analysis that you performed for the 2013
19   elections, specifically with respect to
20   Black voters, and your EI analysis with
21   respect to the Black voter in 2013 to both
22   be reliable, both estimates. Do you recall
23   that?
24   A.   Not specifically.
25   Q.   So you don't recall when I asked

Page 191

1   Cole
2   you that question?
3   A.   As I said, I don't recall that
4   specific question.
5   Q.   All right. Well, we can go over
6   it again.
7   Is it possible that both your
8   correlation analysis for the Black voters in
9   2013 and your EI estimate for the Black
10   voters in 2013 to both be reliable?
11   A.   If I didn't before, I'll ask it
12   now, what do you mean by "reliable"?
13   Q.   Meaning -- well, is it possible
14   that your correlation analysis can generate
15   a reliable indicator; for example, of
16   increasing minority support for particular
17   candidates in different polling places and
18   have your EI analysis still be as reliable
19   as it otherwise would be?
20   A.   Once again, what do you mean by
21   "reliable"?
22   Q.   Here is the thing, I don't
23   understand why you say that your correlation
24   analysis necessarily is inconsistent with
25   your EI estimate. I don't think they have

Page 192

1   Cole
2   anything to do with each other. Am I wrong?
3   A.   Yes.
4   Q.   What do they have to do with
5   each other?
6   A.   Correlation coefficient is a
7   measure of the strength of the relationship
8   between racial composition of precincts and
9   voter outcome. And the EI produces specific
10   estimates which are another indication of
11   the magnitude of polarized voting.
12   Q.   So what I'm asking is: Is it
13   possible for your correlation analysis to
14   accurately reflect the increasing degree of
15   Black voter support for a certain candidate
16   and have your EI estimate of the share of
17   Black voter support for the candidates in
18   2012 to be -- or 2013, rather, to be the
19   same?
20   A.   It's possible.
21   Q.   Right.
22   That means that those two
23   analyses are not necessarily inconsistent,
24   right?
25   A.   Not necessarily.

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1   Cole
2   Q.   Right.
3   Is there any reason to think
4   that they are inconsistent?
5   A.   Yes. As I said in my report,
6   the correlational analysis is more
7   consistent with facts on the ground than the
8   EI estimates.
9   Q.   If I also recall correctly your
10   correlation analysis for the 2013 election
11   for the Black voters, you did not generate
12   an estimate that was statistically
13   significant, right?
14   A.   That's correct, but the effect
15   size of those correlations was of the
16   magnitude that one can rely upon them.
17   Q.   Right.
18   So the not statistically
19   significant correlation analysis that is not
20   necessarily inconsistent with the EI
21   estimate that you generated is outweighed by
22   facts on the ground; is that your testimony?
23   A.   I'm saying that the correlation
24   coefficient is consistent with facts on the
25   ground, and those -- and homogenous precinct

49 (Pages 190 - 193)

Page 194

1   Cole
2   analysis, and those --
3   Q.   Hold on a second. You didn't do
4   a homogenous precinct analysis for Black
5   voters in 2013?
6   A.   That's true. For the White
7   cohesion, for the White analysis, the
8   correlation coefficient was consistent with
9   homogenous precinct analysis and EI and the
10 supplemental evidence.
11   Q.   Right.
12   Isn't the White voter EI that
13 you estimate, isn't that generated
14 independently of your Black voter EI?
15   A.   Yes.
16   Q.   So your correlation analysis is
17 not necessarily inconsistent with your EI
18 estimate for Black voters in 2013; is that a
19 fair sum up?
20   A.   Could repeat that?
21   Q.   Your correlation analysis for
22 Black voters in 2013 is not necessarily
23 inconsistent with your EI estimate for Black
24 voters in 2013; is that a fair sum up?
25   A.   No. I would say that -- did you

Page 195

1   Cole
2   say not necessarily consistent?
3   Q.   I said, "not necessarily
4   inconsistent."
5   A.   I'd say it's not -- I would
6   prefer to say that the different results
7   from the correlation analysis and the EI
8   analysis for Black voters in 2013 without
9   supplemental evidence would lead me -- it
10 would be inconclusive.
11   MR. LEVINE: Could you read that
12   answer back?
13   (Record read.)
14   Q.   I hate to keep going after that
15 one subject, but I remain confused because
16 what do you mean when you say "different
17 results from the correlation analysis and
18 the EI estimate," they don't generate the
19 same results ever, they measure different
20 things, right?
21   A.   They measure different aspects
22 of racially polarized voting.
23   Q.   What do you mean by "different
24 results"?
25   A.   The results from the correlation

Page 196

1   Cole
2   coefficient can inform the analyst about
3   racially polarized voting.
4   Q.   Do the results of the
5   correlation coefficient ever tell you the
6   percentage by race of support for a
7   candidate?
8   A.   That's not what it is meant to
9   do.
10   Q.   Right.
11   So the results of a correlation
12 analysis are always going to be different
13 than an ecological inference analysis,
14 right?
15   A.   They measure different aspects
16 of racially polarized voting. The
17 correlation coefficient, as I said before,
18 measures the strength of the association
19 between racial composition of the precincts
20 and voter outcome; whereas, EI is a
21 different reflection, different kinds of
22 estimates, but does inform you about
23 racially polarized voting.
24   Q.   Is there some particular output
25 from your correlation analysis that you

Page 197

1   Cole
2   would want to see to confirm a particular
3   result in your ecological inference
4   analysis?
5   MR. GROSSMAN: Objection.
6   A.   A correlation coefficient is a
7   correlation coefficient. That's the result.
8   Q.   Since I believe this is a
9   paraphrase of your own testimony, let's try
10 it one more time to sum up.
11   The results of your correlation
12 analysis for the 2013 election with respect
13 to Black voters is not necessarily
14 inconsistent with your estimate of the
15 support of Black voters for candidates in
16 the 2013 election?
17   MR. GROSSMAN: Objection.
18   A.   You asked me that question
19 before and I answered it differently with a
20 different set of words.
21   Q.   Which is why I asked it again.
22 Would you like me to ask it one more time to
23 see if I can get you to reanswer it one more
24 time?
25   A.   Can you rephrase it?

50 (Pages 194 - 197)

Page 198

1   Cole
2   Q.   If it will make more sense,
3   right?
4   A.   Yeah.
5   Q.   All right.
6   The results of your correlation
7   analysis for the 2013 election, Black
8   voters, are not inconsistent -- rather not
9   necessarily inconsistent with your EI
10   estimate of Black voter support for
11   candidates in the 2013 election?
12   A.   I think that is essentially the
13   same wording. You're saying "not
14   necessarily inconsistent"?
15   Q.   Um-hum.
16   A.   And I'm saying that they are
17   inconsistent.
18   Q.   You're saying they are
19   inconsistent?
20   A.   For the Black voters, the EI and
21   correlational results are not consistent.
22   Q.   Why do you think that is?
23   A.   I don't know.
24   Q.   Do you think that's because your
25   EI analysis is mistaken?

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1   Cole
2   A.   I don't think so.
3   Q.   Do you think that's because your
4   correlation analysis might be mistaken?
5   A.   I don't think so.
6   Q.   Is either one of those possible?
7   A.   Possible; not likely, but
8   possible.
9   Q.   It's a conundrum; if your EI
10   analysis for 2013 for the Black voters is
11   unreliable or inconsistent, what makes the
12   rest of your EI worth paying attention to?
13   MR. GROSSMAN: Objection.
14   A.   I'm confident in the results. I
15   just can't explain them for that 2013.
16   MR. LEVINE: No further
17   questions.
18   MR. GROSSMAN: Let me clarify
19   one sort of technical thing very
20   briefly.
21   EXAMINATION (CONT'D)
22   BY MR. GROSSMAN:
23   Q.   Counsel asked you whether you
24   have been asked to collect the data and
25   documents that you would use in order to

Page 200

1   Cole
2   produce your analysis. You said "no"
3   before. Have you -- you've retained all of
4   those data and documents, correct?
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Page 201

1   Cole
2   A.   Yeah, I believe I answered -- I
3   believe I answered it that way.
4   Q.   Okay, sorry. Just I wanted to
5   make clear that we've already done that
6   retention.
7   MR. GROSSMAN: We're done.
8   MR. LEVINE: That concludes the
9   deposition. Thank you very much. I
10   appreciate your time.
11   (Time noted: 5:32 p.m.)
12   _____
13   STEVEN PARKER COLE, Ph.D.
14
15   Subscribed and sworn to before me
16   this ___ day of _____, 201_.
17
18   _____
19   Notary Public
20
21
22
23
24
25

51 (Pages 198 - 201)

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```
 1
 2           C E R T I F I C A T E
 3   STATE OF NEW YORK    )
 4               : ss.
 5   COUNTY OF NEW YORK   )
 6         I, THERESA TRAMONDO, a Notary
 7   Public within and for the State of New
 8   York, do hereby certify:
 9         That Steven Parker Cole, Ph.D.,
10   the witness whose deposition is
11   hereinbefore set forth, was duly sworn by
12   me and that such deposition is a true
13   record of the testimony given by the
14   witness.
15         I further certify that I am not
16   related to any of the parties to this
17   action by blood or marriage, and that I am
18   in no way interested in the outcome of
19   this matter.
20         IN WITNESS WHEREOF, I have
21   hereunto set my hand this 13th day of
22   February, 2018.
23
24   _____
25            THERESA TRAMONDO
```

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 1   NAACP v. ERCSD
 2   Steven Parker Cole , Ph.D.
 3     INSTRUCTIONS TO THE WITNESS
 4         Please read your deposition over
 5   carefully and make any necessary corrections.
 6   You should state the reason in the
 7   appropriate space on the errata sheet for any
 8   corrections that are made.
 9         After doing so, please sign the errata
10   sheet and date it.
11         You are signing same subject to the
12   changes you have noted on the errata sheet,
13   which will be attached to your deposition.
14         It is imperative that you return the
15   original errata sheet to the deposing
16   attorney within thirty (30) days of receipt
17   of the deposition transcript by you.  If you
18   fail to do so, the deposition transcript may
19   be deemed to be accurate and may be used in
20   court.
21
22
23
24
25   2808166
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 1
 2   ------------- I N D E X --------------
 3   WITNESS    EXAMINATION BY      PAGE
 4   S.P. COLE   MR. LEVINE        5/184
 5         MR. GROSSMAN       168/199
 6   -------- INFORMATION REQUESTS ---------
 7   DIRECTIONS:  (NONE)
 8   RULINGS:  (NONE)
 9   TO BE FURNISHED:  (NONE)
10   REQUESTS:  (NONE)
11   MOTIONS:  (NONE)
12   CONFIDENTIAL:  (NONE)
13   -------------- EXHIBITS ----------------
14   COLE                  FOR ID.
15    Cole Exhibit 1, Curriculum vitae    9
16    of Steven P. Cole, Ph.D., dated
17    December 2017
18    Cole Exhibit 2, Preliminary Expert  29
19    Report of Steven P. Cole, Ph.D.
20    Cole Exhibit 3, article cited in    108
21    Footnote 17 of expert report
22    Cole Exhibit 4, Annual Budget and   158
23    Trustee Vote for May 16, 2017
24    Official Results
25      (EXHIBITS RETAINED BY REPORTER.)
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 1   NAACP v. ERCSD
 2   Steven Parker Cole , Ph.D.
 3         E R R A T A
 4         - - - - -
 5   PAGE  LINE   CHANGE
 6   ___ ___ _____
 7   Reason:_____
 8   ___ ___ _____
 9   Reason:_____
10   ___ ___ _____
11   Reason:_____
12   ___ ___ _____
13   Reason:_____
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16   ___ ___ _____
17   Reason:_____
18   ___ ___ _____
19   Reason:_____
20   ___ ___ _____
21   Reason:_____
22   ___ ___ _____
23   Reason:_____
24   ___ ___ _____
25   2808166
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 1  NAACP v. ERCSD
 2  Steven Parker Cole , Ph.D.
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 6  pages and that the same is a correct
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